Table of Contents

Title 43
NATURAL RESOURCES

Part I. Office of the Secretary

Subpart 1. General

Subpart 2. Oilfield Site Restoration

Subpart 3. Oyster Lease Damage Evaluation Board Proceedings

Part III. Office of Management and Finance

Part V. Office of Mineral Resources

Part VI. Water Resources Management

Subpart 1. Ground Water Management

Title 43
NATURAL RESOURCES
Part I. Office of the Secretary
Subpart 1. General

Chapter 1. General Rules and Regulations

§101. Definitions

A. As used in these rules and regulations:

Adjudication the process for the formulation of a decision or order.

Administrative Procedure Act Act 382 of 1966 as amended by Act 284 of 1074 and Act 730 of 1975 (R.S. 49:951 et seq.), and any amendments thereto.

Decision or Order the whole or any part of the final disposition (whatever its form, whether affirmative, negative, injunctive or declaratory) of the secretary, in any matter other than rulemaking, required by Constitution or statute to be determined on the record after notice and an opportunity for a hearing.

Declaratory Ruling or Order a statement of limited applicability concerning the rights of specific parties or expressing the opinion of the secretary on a particular subject.

Department the Department of Natural Resources, state of Louisiana.

Party each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted and/or heard as a party.

Person any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character, other than the secretary.

Rule each statement of general applicability and future effect that implements, interprets or prescribes substantive law or policy, or prescribes the procedure or practice requirements of the secretary. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management of the Department of Natural Resources and not affecting private rights or procedures available to the public, declaratory rulings or orders' or intra-agency memoranda.

Rulemaking the process employed by the secretary for the formulation of a rule.

Secretary the secretary of Natural Resources, state of Louisiana.

Violation a violation of any provision of the secretary's rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§103. Conflicts

A. If any conflict should develop between a rule or an order, and a provision of the Louisiana Constitution or a statute which prohibits such rule or order, the provision of the Constitution or statute shall prevail.

B. The Administrative Procedure Act shall govern all rules and regulations of the secretary, and the secretary shall have all power conferred by that Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§105. Public Information; Adoption of Rules; Availability of Rules and Orders

A. The general course and method of operations of the secretary by which the public may obtain information or make submissions or requests, shall be as provided in the Administrative Procedure Act and by these rules and regulations.

B. The within rules and regulations set forth the nature and requirements of formal and informal procedures available and of forms and instructions used by the secretary.

C. The within rules and regulations are available for public inspection, as are any and all other rules and regulations and all other written statements of policy or interpretations formulated, adopted or used by the secretary in the discharge of his functions, at the offices of the secretary in Baton Rouge.

D. All final orders, decisions, and opinions are available for public inspection at the offices of the secretary in Baton Rouge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§107. Procedure for Adoption of Rules

A. Prior to the adoption, amendment or repeal of any rule or regulation, the secretary will:

1. give at least 15 days' notice of his intended action. The notice will include a statement of either the terms or substance of the intended action, or a description of the subjects and issues involved, and the time when, and the place where, and the manner in which interested persons may present their views thereon. The notice will be mailed to all persons who have made timely request of the secretary for advance notice of rulemaking proceedings and will be published at least once in the *Louisiana Register*. The secretary may, at his discretion, authorize more than 15 days' notice of intended action. For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date of publication of the issue of the *Louisiana Register* in which the notice appears, such publication date to be the publication date as stated on the first page of said issue;

2. afford all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing. In case of substantive rules, opportunity for oral presentation or argument will be granted if requested by 25 persons, by a governmental subdivision or agency or by an association having not less than 25 members. The secretary will consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule or rules, the secretary, if requested to do so in writing by an interested person either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption. An individual interested in orally presenting a position on an issue which does not require a separate public hearing, may be allowed to do so at a public meeting called by the secretary, at the discretion of the secretary.

B. If the secretary should find that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than 15 days' notice, he will state in writing to the governor of the state of Louisiana, the attorney general of Louisiana, and the Division of Administration of the state of Louisiana, the reasons for that finding, and will proceed without prior notice or hearing, or upon any abbreviated notice and hearing that finds practicable, to adopt an emergency rule.

C. A rule adopted in substantial compliance with this Section shall be valid, and inadvertent failure to give notice to any person or agency as provided herein shall not invalidate any rule adopted hereunder. A proceeding under §127 of these rules and regulations to contest the validity of any rule on the ground of noncompliance with the procedural requirements of this Section must be commenced within 30 days from the effective date of the rule.

D. An interested person may petition the secretary requesting promulgation, amendment or repeal of a rule. The petition may be in simple form or by letter, and shall be considered and disposed of in writing within 90 days after submission, either by denial with written reasons, or by initiation of rulemaking proceedings in accordance with the provisions of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§109. Filing, Publication, and Taking Effect of Rules

A. The secretary shall file a certified copy of each rule and regulation which he adopts, including a copy of the within rules and regulations, in the office of the Division of Administration.

B. Compilations may omit any rule, the publication of which would be unduly cumbersome, expensive or otherwise inexpedient; but such rule or rules, in processed or printed form will be made available on application to the secretary.

C. Compilations will be made available upon request to agencies or officials of Louisiana free of charge, and to other persons at prices fixed by the Division of Administration to cover mailing and publication costs.

D. Each rule hereafter adopted shall become effective upon its publication in the *Louisiana Register*, said publication to be subsequent to the act of adoption, except that:

1. if a later date is required by statute or specified in the rule, the later date shall be the effective date;

2. subject to applicable constitutional or statutory provisions, an emergency rule shall become effective on the date of its adoption, or on a date specified by the secretary to be not more than 60 days future from the date of its adoption, provided written notice is given within three days of the date of adoption to the governor of Louisiana, the attorney general of Louisiana, and the Division of Administration as provided in §307.B of these rules and regulations. Such emergency rule shall not remain in effect beyond the publication date of the *Louisiana Register* published in the month following the month in which the emergency rule is adopted, unless such rule and the reasons for adoption thereof are published in said issue; provided, however, that any emergency rule so published shall not be effective for a period longer than 120 days, but the adoption of an identical rule under §307.A.1 and §307.A.2 is not precluded. The secretary will take appropriate measures to make emergency rules known to the persons who may be affected by them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§111. Investigations

A. Any person may file with the secretary or the executive director, a written complaint of a violation of the secretary's rules and regulations.

B. The secretary may at any time, upon his own initiative, investigate any suspected violation of these rules and regulations.

C. In connection with the investigation of a possible violation of the rules and regulations, the secretary may authorize that public hearings be conducted in accordance with the rules applicable to adjudication proceedings.

D. The secretary has the power to develop facts through either informal investigation procedures or through formal hearings.

E. Investigations shall be for the purpose of determining such questions as whether a violation exists, the scope of the violation, and the persons or parties involved.

F. To the extent practicable, investigatory hearings shall be held in accordance with the rules applicable to adjudicatory proceedings.

G. When the secretary determines that there has been a violation of the Act, or of any of the secretary's rules and regulations, he is authorized to take appropriate action, which may include the initiation of adjudicatory proceedings for enforcement purposes, or the institution of appropriate judicial proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§113. Adjudication Notice; Hearing; Records

A. All hearings shall be public and shall be conducted by the secretary or a presiding officer designated by the secretary to conduct the hearings.

B. The secretary shall fix the time and place for the hearing. All hearings shall be held in a convenient place, accessible to the public, in the city of Baton Rouge. If the secretary deems that the interests of the secretary or any person or party, or the location of the parties or witnesses, or the ends of justice so require, the hearing may be held in any other convenient place of public accessibility within the state.

C. Any hearing may for valid cause be continued by the secretary or the presiding officer.

D. Parties shall have the right, but shall not be required, to be represented by counsel. Any such counsel must be duly licensed to practice law in the state of Louisiana, or be associated in the hearings with such duly licensed counsel.

E. In an adjudication, all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice.

F. The notice will include:

1. a statement of the time, place and nature of the hearing;

2. a statement of the legal authority and jurisdiction under which the hearing is to be held;

3. a reference to the particular sections of the statutes and rules involved;

4. a short and simple statement of the matters asserted;

5. the date on which any person who may object to the matters asserted must present to the secretary a written objection. A written objection shall contain a short and simple statement of the basis of the objection.

G. If the secretary or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application or request, a more definite and detailed statement shall be furnished.

H. Opportunity wild be afforded to all parties to timely respond and present evidence on all issues of fact, and argument on all issues of law and policy involved, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

I. Unless precluded by law, informal disposition may be made, at any time, of any case of adjudication by stipulation, agreed settlement, consent order or default.

J. The record in a case of adjudication shall include:

1. all pleadings, motions and intermediate rulings;

2. all evidence received or considered, or a résumé thereof if not transcribed;

3. a statement of matters officially noticed, except matters so obvious that statement of them would serve no useful purpose;

4. offers of proof, objections and rulings thereon;

5. proposed findings and conclusions and exceptions thereto;

6. any decision, opinion or report by the officer presiding at the hearing.

K. The secretary shall make a full transcript of all proceedings and shall, at the request of any party or person, furnish said party or person with a copy of the transcript or any part thereof upon payment of the cost thereof.

L. Findings of fact will be based exclusively on the evidence and on matters officially noticed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§115. Rules of Evidence; Official Notice; Oaths and Affirmations; Subpoenas; Deposition and Discovery

A. In adjudication proceedings:

1. the secretary or presiding officer will admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs, and will give effect to the rules and privileges recognized by law. The secretary or presiding officer will exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Objection to evidentiary offers may be made and shall be noted in the record. Subject to

these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

2. all evidence, including records and documents in the possession of the secretary of which he desires to avail himself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence;

3. notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the secretary's specialized knowledge. Parties will be notified either before or during the hearing, or by reference to preliminary reports or otherwise, of the material to be noticed, including any staff memoranda or data, and they will be afforded an opportunity to contest the admissibility of the material to be noticed. The secretary's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

B. The secretary or the presiding officer appointed by the secretary conducting a proceeding subject to these rules and regulations shall have the power to administer oaths and affirmations, regulate the course of the hearings, and the time and place of continued hearings, fix the time for filing of briefs and other documents, and direct the parties to appear and confer to consider simplification of the issues.

C. The secretary or the secretary's presiding officer shall have power to sign and issue subpoenas in the name of the secretary requiring attendance and giving of testimony by witnesses and the production of books, papers and other documentary evidence. No subpoena will be issued until the party who wishes to subpoena the witness first deposits with the secretary, a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and 3671. Witnesses subpoenaed to testify before the secretary only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witnesses, as may be fixed by the secretary with reference to the value of the time employed and the degree of learning or skill required. Whenever any person summoned under this Section neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the secretary may apply to the judge of the District Court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt. The provisions of this Part shall not be applicable as to the deposit of sums sufficient to pay all fees and expenses to which a witness in a civil suit is entitled pursuant to R.S. 13:3661 and 3671 when the party requesting production complies with the provisions of the Louisiana Code of Civil Procedure applicable to the waiver of costs for indigents (Articles 5181 through 5188).

D. The presiding officer of the secretary, or any party to a proceeding before him may take the depositions of witnesses, within or without the state of Louisiana, in the same manner as provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in any proceeding affected by these rules or the Administrative Procedure Act. The admission of such depositions may be objected to at the time of hearing and may be received in evidence or excluded from evidence by the presiding officer in accordance with the rules of evidence provided in these rules and regulations.

E. The secretary may adopt rules providing for discovery to the extent and in the manner appropriate to its proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§117. Decisions and Orders

A. A final decision or order adverse to a party in an adjudication proceeding will be in writing or will be stated in the record. A final decision will include findings of fact and conclusions of law. If findings of fact are set forth in statutory language, they will be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A party may submit proposed findings of fact and conclusions of law, and, in that event, the decisions shall include a ruling upon each proposed finding and conclusion. Parties will be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order will be delivered or mailed forthwith to each party and to his attorney of record. By written stipulation, the parties may waive, and in the event that there is no contest, the secretary may eliminate, compliance with this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§119. Rehearings

A. A decision or order in a case of adjudication shall be subject to rehearing, reopening or reconsideration by the secretary within 10 days from the date of its entry. The grounds for such action shall be either that:

1. the decision or order is clearly contrary to the law and the evidence;

2. the party has discovered, since the hearing, evidence important to the issues which he could not with due diligence have obtained before or during the hearing;

3. there is a showing that issues not previously considered ought to be examined in order to dispose of the matter;

4. there is other good ground for further consideration of the issues and the evidence in the public interest.

B. The petition of a party for rehearing, reconsideration or review, and the order of the secretary, if granting it, will set forth the grounds which justify such action. Nothing in this Section will prevent rehearing, reopening or reconsideration of a matter by the secretary in accordance with other statutory proceedings applicable to it, or at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. On reconsideration, reopening or rehearing, the matter may be heard by the secretary, or it may be referred to a presiding officer. The hearing will be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered. If an application for rehearing is filed timely, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§121. Ex Parte Consultations and Recusations

A. Unless required for the disposition of ex parte matters authorized by law, the secretary or the presiding officer designated to conduct the hearing, shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee or agent engaged in the performance of investigative, prosecuting or advocating functions, except upon notice or opportunity for all parties to participate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§123. Remedies

A. The secretary may issue:

1. decrees or orders requiring a party to cease and desist from any course of conduct or action deemed by the secretary to be inimical to its purposes or aims or any part thereof;

2. decrees or orders requiring a party to take affirmative action to further the interests of the secretary or to correct or insure correction of prior action of a party or otherwise;

3. declaratory decrees or orders as to the policy of the secretary in any regard;

4. generally any decrees or orders to affect the interests of the secretary as to his general aims and purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§125. Judicial Review of Declaratory Orders and Rulings

A. Within 15 days from the decree, or of a declaratory order or ruling, any party affected thereby may petition the Civil District Court for the Parish of East Baton Rouge, for a declaration as to the validity or applicability of any declaratory decree, order or ruling. After the lapse of such period of 15 days, or upon the finality of any order of court with regard thereto, such declaratory decree, order or ruling shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§127. Judicial Review of Validity or Applicability of Rules

A. The validity or applicability of a rule or regulation may be determined in an action for declaratory judgment in the Civil District Court for the Parish of East Baton Rouge, in which the secretary is made a party to the action. An action for a declaratory judgment under this Section may be brought only after the plaintiff has requested the secretary to pass upon the validity or applicability of the rule or regulation in question, and only upon a showing that review of the validity and applicability of the rule or regulation in connection with a review of a final agency decision in a contested-adjudication case would not provide an adequate remedy and would inflict irreparable injury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§129. Judicial Review of Adjudication

A. A person who is aggrieved by a final decision or order in an adjudication proceeding is entitled to judicial review thereof, whether or not he has applied to the secretary for rehearing, without limiting, however, utilization of or the scope of judicial review available under other means of review, redress, relief or trial de novo provided by law. A preliminary, procedural or intermediate action or ruling is immediately reviewable, if review of the final decision would not provide an adequate remedy and would inflict irreparable injury.

B. Proceedings for review may be instituted by filing a petition in the Civil District Court for the Parish of East Baton Rouge within 30 days after the mailing of notice of the final decision by the secretary, or if a rehearing is requested, within 30 days after the decision thereon. Copies of the petition shall be served upon the secretary and on all parties of record.

C. The filing of the petition does not itself stay enforcement of the decision of the secretary, who may, however, grant a stay upon appropriate terms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

§131. Construction and Effect

A. Nothing in these rules and regulations shall be held to diminish the constitutional rights of any person, or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise provided by law, all requirements or privileges relating to evidence or procedure shall apply equally to the secretary and all persons.

B. If any provision of these rules and regulations shall be found to be in conflict with federal requirements, such conflicting provision of these rules and regulations is hereby declared to be inoperative solely to the extent of such conflict, and such findings or determination shall not affect the operation of the remaining provisions of these rules and regulations in their application to the functions of the secretary.

C. If any provision of these rules and regulations or the application thereof is held to be invalid, the remaining provisions of these rules and regulations or other application thereof shall not be affected, so long as they can be given effect without the invalid provision, and to this end the provisions of these rules and regulations are declared to be severable.

D. These rules and regulations shall take effect upon their approval by the secretary and filing and publication pursuant to the provisions of §309 of these rules and regulations, and no procedural requirement shall be mandatory as to any proceeding instituted prior to the effective date of such requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:356 (November 1979).

Chapter 3. Louisiana Fuel Protection Act of 1979; Implementation of Act 605 of 1979

§301. Definitions

A. As used in these rules and regulations:

Act Act 605 of 1979, and any amendments thereto.

Administrative Costs include the wages and salaries of the secretary's staff and employees; the engineering, legal, and operating costs incurred by or on behalf of the secretary; the equipment, supplies and overhead required for the secretary to carry out his functions, and any other similar administrative costs reasonably required by the secretary for operation and management.

Alternate Fuel or *Other Alternate Fuel* some fuel other than natural gas, coal, and, with the exceptions stated in the federal Power-plant and Industrial Fuel Use Act of 1978, oil.

Applicant any person who applies for a license pursuant to these rules and regulations.

Application an application submitted under these rules and regulations for a license to construct or operate support facilities within the jurisdiction of the secretary of Natural Resources, for transfer or renewal of any such license, or for any substantive change in any of the conditions or provisions of any such license.

Application Processing Fees all fees or charges imposed by the secretary pursuant to these rules and regulations.

Economic Costs shall include, but not be limited to, costs for facilities and services related to transportation, education, health, highways, roads and streets, police protection, fire protection, sewerage and water facilities and services, sanitation, flood protection, parks and recreation, libraries, and other similar types of community services.

License a license issued by the secretary, pursuant to these rules and regulations, to any person to construct or operate support facilities within the jurisdiction of the secretary.

Licensee the holder of a valid license.

Person has the identical meaning given that term in the Act.

Secretary the secretary of Natural Resources.

Support Facility any facility providing an intermediate coal or alternate fuel service essential or useful to the use of, or conversion to, such fuels by powerplants and industries, the availability of which will facilitate economical and orderly use of or conversion to coal or alternate fuel and inure to the benefit of Louisiana citizens using the products produced by the powerplants and industries which utilize the support facility, and which the secretary has determined is required by the public interest of the state to be either licensed by the state under this Act, or if no person is interested in obtaining a license and constructing and operating such support facility, is owned and operated by the department as elsewhere provided in this Act. Support facilities shall include, without exclusion, facilities for loading and unloading, cleaning, blending, and/or storing coal or alternate fuel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1603.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:359 (November 1979).

§303. Applications

A. No person shall construct or operate, or cause to be constructed or operated, support facilities within the jurisdiction of the secretary without first filing an application and obtaining a license from the secretary pursuant to the provisions of these rules and regulations.

B. An application shall contain the following general information:

1. a brief summary of the entire application suitable for use by the secretary in giving the notices required by the rules and regulations;

2. the name, address, citizenship, and telephone number of the applicant;

3. the names and addresses of the officers of the applicant;

4. the name and address of the person designated by applicant to receive formal notices or documents;

5. a statement at the end of the application, subscribed and sworn to before a notary public, that the person who signs the application represents that he is authorized and empowered to sign the application on behalf of the applicant and that the contents of the application are true;

6. if the applicant is a corporation, a copy of the applicant's charter or certificate and articles of incorporation, certified by the appropriate official of the state of incorporation.

C. An application shall contain a description of the proposed support facility and the service it will render.

D. An application, based upon facts available at the time of the application, shall contain an analysis of:

1. the extent to which the construction and/or operation of the proposed support facilities may increase the demand on the state of Louisiana and its political subdivisions for public services and facilities, including, but not limited to, schools, parks, transportation facilities, wharves, docks, electricity, water, and sewage facilities, flood protection, police and fire protection, and other physical and social services;

2. an estimate as to the direct and indirect economic, environmental, and administrative costs attributable to the construction and operation of the proposed support facilities;

3. the areas and facilities to be served by the proposed support facilities with specific data as to amounts and types of coal or other alternate fuel to be transported to, and/or refined or used at, each projected destination on an annual basis;

4. all relevant facts showing the extent to which proposed support facilities will contribute to the maintenance and/or development of energy-using industries in Louisiana and to the availability of the products of those industries to Louisiana consumers and industries;

5. all relevant facts showing the extent to which the construction and operation of the proposed support facilities will contribute to increased employment and employment benefits in Louisiana;

6. the projected temporary and permanent demographic effect of the construction and operation of the proposed support facilities;

7. the projected demand for services related to the proposed support facilities, with emphasis on the duration and location of such services. Services as used in these rules and regulations include, but are not limited to, skilled and unskilled labor, barge services, dock workers, contractors, fabricators, engineering and other professional consultants, suppliers, surveyors, and repair and maintenance services and personnel, and living accommodations.

E. An application shall contain a statement by the applicant that he will comply with any reasonable conditions the secretary may prescribe in accordance with the provisions of the Act or the secretary's rules and regulations, with such reasonable conditions to be contained in the license.

F. An applicant shall designate those portions of any information submitted to the secretary, as part of an application, which concern or relate to trade secrets or which are by nature confidential.

G. Each applicant shall pay to the secretary such application processing fees as provided elsewhere in these rules and regulations.

H. Ten copies of an application shall be filed with the secretary. After the filing of an application, the secretary shall determine, as promptly as reasonably possible, whether or not such application contains all of the information required by these rules and regulations.

I. If the secretary determines that an application appears to contain the information required by these rules and regulations, he shall publish notice of the filing of the application and a summary of the application immediately in the official journal of the state of Louisiana. A copy of the notice and summary shall also be mailed to all interested persons who have made written request of the secretary for such information.

J. If the secretary determines that all the required information is not contained in the application, the secretary shall promptly notify the applicant of such deficiencies in writing and require that the deficiencies be corrected within a certain period of time or the application will be denied for failure to do so.

K. The secretary may hold such investigatory or adjudicatory hearings as he deems necessary for a proper review and consideration of an application.

L. At any time during an application proceeding, the secretary may require an applicant to submit such additional information as the secretary deems necessary in order to meet the requirements of these rules and regulations and other applicable law, and to enable the secretary to carry out his responsibilities thereunder.

M. An application may be amended or withdrawn at any time before the secretary renders a final decision thereon, by submitting 10 copies of the amendment, or a written request for withdrawal, to the secretary. If information in an application becomes inaccurate or incomplete after it is filed but before a final decision is rendered on the application, the applicant shall promptly furnish the correct or additional information.

N. Unless the context clearly indicates otherwise, all information required to be furnished by this Section shall cover the term of a license. All projections and estimates required by this Section shall be uniformly expressed and shall be estimated in accordance with the best available procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1603.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:359 (November 1979).

§305. Application Processing Fees

A. Any person who files an application with the secretary shall reimburse the secretary in accordance with these rules and regulations, for all direct costs incurred by or on behalf of the secretary in processing any such application.

B. Any person who files an application with the secretary for a license to construct or operate support facilities within the secretary's jurisdiction shall remit at the time such application is filed an initial application processing fee of $100 represented by a certified or cashier's check drawn on a bank or trust company doing business under the laws of the state of Louisiana or the United States, payable to the state of Louisiana, Department of Natural Resources.

C. The application processing fee provided for in the preceding paragraph, and all interest accrued thereon, shall be used by the secretary to compensate the secretary for all direct costs incurred by or on behalf of the secretary in processing such applications.

D. Should the application be withdrawn by the applicant before the issuance by the secretary to the applicant of a license to construct or operate support facilities, the secretary shall refund to the applicant any portion of the application fee remaining after payment by the secretary of all direct costs incurred in processing such application through the date of such withdrawal.

E. The secretary shall periodically make a determination of the amount of all direct costs incurred by or on behalf of the secretary in processing an application.

F. The secretary shall assess, as application processing fees, all such direct costs against the person or persons whose application has given rise to the direct costs incurred and sought to be recovered, and shall serve on each such person a "Notice of Assessment". Such person or persons shall thereafter make full payment of such fees to the secretary within 30 days from receipt of Notice of Assessment.

G. Any person on whom a Notice of Assessment is served under these regulations shall be entitled to a hearing before the secretary on such assessment, provided a written request for a hearing is filed with the secretary within 30 days after receipt of the Notice of Assessment.

H. The secretary's general rules and regulations and the Louisiana Administrative Procedure Act (R.S. 49:951 et seq.) shall apply to any hearing held in connection with any Notice of Assessment under these rules and regulations.

I. Should any person fail to pay any application processing fees when due, such person shall pay interest at the legal rate per annum on the unpaid balance of such assessment from the date the assessment is due until paid.

J. The secretary shall maintain such records as may be necessary in order to identify, determine and recover all application processing fees pursuant to these rules and regulations, and the secretary shall make such records available to interested persons in accordance with applicable law.

K. Application processing fees recovered by the secretary pursuant to these rules and regulations shall be limited to the amount necessary to compensate the secretary for the actual costs incurred in processing the application.

L. This Section shall not be interpreted to enlarge or diminish the right of the state of Louisiana, or any political subdivision thereof, to impose any other valid fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1603.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:360 (November 1979).

§307. Licenses

A. No license shall issue unless the secretary determines that:

1. the facilities which are the subject of a license application to the secretary are *support facilities* within the term and meaning of Act 605 of 1979 and these rules and regulations;

2. the construction and operation of the proposed support facilities will promote the economic and industrial well being of the state of Louisiana, will be an economically viable project as shown by the data provided in the application, and will be consistent with the public interest as declared in the Act. In making the finding of economic viability and public interest, the secretary shall consider the effect of an application on existing licensed support facilities and shall not issue a license which would be contrary to the state plan promulgated by the secretary pursuant to Act 605 of 1979;

3. the proposed support facilities will be constructed and operated in conformance with the Act, the rules and regulations of the secretary, other applicable law and conditions of the license;

4. the applicant has reimbursed the secretary for all direct costs incurred by or on behalf of the secretary in processing the application and has paid to the secretary any other sums due the secretary under applicable law.

B. A license shall contain the name and address of the licensee, and the licensee's agent for service of process in the state of Louisiana.

C. A license shall contain a description of the support facilities licensed.

D. A license shall describe all activities authorized by the license.

E. A license shall be subject to and contain such reasonable conditions as the secretary deems necessary to carry out the purposes of the Act and the secretary's rules and regulations, including, but not limited to, conditions requiring that the licensee:

1. comply with all applicable laws and regulations, now in effect or hereafter adopted or amended;

2. construct and operate the support facilities in accordance with the description of such construction and operation in the license;

3. promptly provide the secretary with the name, address, citizenship, and telephone number of any person with whom the applicant has made, or proposes to make, a significant contract for the design, construction or operation of support facilities within the secretary's jurisdiction, and a description of any such contract;

4. notify the secretary of any substantive changes in any data submitted to the secretary;

5. cooperate with the secretary in monitoring the construction and operation of the licensed support facilities;

6. submit detailed construction drawings, plans and specifications to the secretary for all components of the support facilities sufficiently in advance of commencement of construction of such components to enable the secretary to properly review such drawings, plans and specifications for conformance with the provisions and conditions of a license, the secretary's rules and regulations, and other applicable law;

7. afford access, at reasonable times, to licensed support facilities to representatives of the secretary for the purposes of inspection of relevant records, files, papers, processes, controls, operations, and facilities for the purpose of ascertaining the state of compliance with the license, the Act, and the rules, regulations, and orders of the secretary.

F. At the time of issuance of a license by the secretary, the secretary and licensee shall enter into a written agreement which shall provide that:

1. a licensee which exercises its rights under the license shall pay to the secretary reasonable fees and charges lawfully recoverable by the secretary to compensate for direct costs incurred by the secretary which pertain to the licensed support facilities;

2. a licensee which exercises rights under the license shall indemnify and hold harmless the secretary from and against any and all liability, loss, demand claims, direct costs, damages, expenses and attorneys fees, and any and all liability therefor, which the secretary may sustain or incur, arising from or connected with acts or omissions of the licensee, its agents, servants, employees or contractors with respect to the location, design, construction or operation of support facilities; provided, however, that the licensee shall not be required to indemnify the secretary for damages resulting solely from negligent acts or omissions on the part of the secretary or his agents, servants, employees or contractors.

G. Except as otherwise provided in these rules and regulations, a license shall be for such term as determined by the secretary.

H. A license may be revoked, suspended, or modified by the secretary for the following reasons:

1. the willful making of a false statement or willful misrepresentation of a material fact in connection with securing or maintaining such license;

2. failure to comply with, or respond to, lawful inquiries, rules, regulations, or orders of the secretary or the conditions of any license issued by the secretary.

I. The secretary may not revoke, suspend, annul, modify or withdraw a license unless, prior to the institution of proceedings, the secretary gives notice by certified mail to the licensee of facts which warrant the intended action, and the licensee is given an opportunity at a hearing to show compliance with all lawful requirements for the retention of the license. If the secretary finds that public health, safety or welfare imperatively require emergency action, and incorporates a finding to that effect in an order, summary suspension of a license may be ordered pending proceedings for suspension, revocation or other action. These proceedings will be promptly instituted and a decision promptly rendered. All hearings held on the suspension, revocation, annulment or withdrawal of a license will be governed by the secretary's general rules and regulations concerning adjudications.

J. Upon the filing of an application by a licensee, a license issued to such licensee under these rules and regulations may be transferred, if the secretary finds that such transfer will be consistent with the public interest as declared in the Act and that the transferee meets all requirements of the Act, the secretary's rules and regulations and other applicable law.

K. The secretary may make clerical corrections in a license upon written request by the licensee demonstrating clearly a need for such changes.

L. Before the secretary may approve any change by a licensee to the licensed support facilities which would constitute a substantive change in any condition or provision of a license, a licensee shall file an application therefor with the secretary and the secretary shall give such application full consideration as provided in these rules and regulations.

M. Licenses may be renewed by following the procedures prescribed herein for obtaining issuance of a license. A license shall be renewed if the secretary finds that the licensee has complied with all terms and conditions of the license.

N. When a licensee has made timely and sufficient application for renewal of a license with reference to any activity of a continuing nature, his existing license shall not expire until the application has been determined finally by the secretary, and, in case the application is denied or the terms of the renewed license limited, until the last day for seeking review of the secretary's order, or a later date fixed by order of the reviewing court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1603.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:359 (November 1979).

§309. Coordination; Enforcement

A. The secretary shall coordinate, consult and cooperate with any federal or state agencies, or political subdivisions of the state, having an interest in the construction and operation of support facilities within the secretary's jurisdiction.

B. Whenever enforcement of any provision of these rules and regulations is warranted, the secretary may initiate and pursue appropriate administrative procedures and may issue such orders and decrees as may be necessary and authorized by the secretary's general rules and regulations, and the secretary may initiate and pursue all appropriate judicial remedies to assure compliance with these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1603.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:359 (November 1979).

Chapter 7. Coastal Management

Subchapter A. Definitions

§700. Definitions

Administrator the administrator of the Coastal Management Division of the Department of Natural Resources.

Advanced Mitigation Project a project implemented to create, restore, protect, and/or enhance wetlands for the purpose of producing ecological values, measured as average annual habitat units or cumulative habitat units (advanced mitigation credits). Such projects must be approved by the secretary prior to implementation, and the advanced mitigation credits shall have limited utility for the purpose of compensating for the ecological values lost due to a permitted activity.

Affected Landowner the owner of the land on which a proposed activity, which would result in an unavoidable net loss of ecological value, is to occur.

Affected Parish the parish in which a proposed activity, which would result in an unavoidable net loss of ecological value, is to occur.

After-the-Fact Permit a coastal use permit which is issued after the commencement of a use. Such a permit may only be issued after all legal issues resulting from the commencement of a use without a coastal use permit have been resolved.

Alterations of Waters Draining in Coastal Waters those uses or activities that would alter, change, or introduce polluting substances into runoff and thereby modify the quality of coastal waters. Examples include water control impoundments, upland and water management programs, and drainage projects from urban, agricultural and industrial developments.

Approved Local Program a local coastal management program which has been and continues to be approved by the secretary pursuant to 214.28 of the State and Local Coastal Resources Management Act (SLCRMA).

Average Annual Habitat Unit a unit of measure of ecological value; average annual habitat units are calculated by the formula: (sum of cumulative habitat units for a given project scenario) / (project years).

Best Practical Techniques those methods or techniques which would result in the greatest possible minimization of the adverse impacts listed in §701.G and in specific guidelines applicable to the proposed use. Those methods or techniques shall be the best methods or techniques which are in use in the industry or trade or among practitioners of the use, and which are feasible and practical for utilization.

Coastal Use Permit a permit required by 214.30 of the SLCRMA. The term does not mean or refer to, and is in addition to, any other permit or approval required or established pursuant to any other constitutional provision or statute.

Coastal Water Dependent Uses those which must be carried out on, in or adjacent to coastal water areas or wetlands because the use requires access to the water body or wetland or requires the consumption, harvesting or other direct use of coastal resources, or requires the use of coastal water in the manufacturing or transportation of goods. Examples include surface and subsurface mineral extraction, fishing, ports and necessary supporting commercial and industrial facilities, facilities for the construction, repair and maintenance of vessels, navigation projects, and fishery processing plants.

Coastal Waters those bays, lakes, inlets, estuaries, rivers, bayous, and other bodies of water within the boundaries of the coastal zone which have measurable seawater content (under normal weather conditions over a period of years).

Coastal Zone the term *coastal zone* shall have the same definition as provided in 214.24 of the SLCRMA.

Compensatory Mitigation replacement, substitution, enhancement, or protection of ecological values to offset anticipated losses of ecological values caused by a permitted activity.

Conservation Servitude as defined at R.S. 9:1272(1), means a nonpossessory interest of a holder in immovable property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of immovable property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, archaeological, or cultural aspects of unimproved immovable property.

Contaminant an element causing pollution of the environment that would have detrimental effects on air or water quality or on native floral or faunal species.

Corps the U.S. Army Corps of Engineers.

Cumulative Habitat Unit a unit of measure of ecological value; for each time interval within the project years, cumulative habitat units are calculated by the formula: $CHUs = (T_2 - T_1) H \{[(A_1 H HSI_1 + A_2 H HSI_2) / 3] + [(A_2 H HSI_1 + A_1 H HSI_2) / 6]\}$, where T_1 = first year of time interval, T_2 = last year of time interval, A_1 = acres of habitat at beginning of time interval, A_2 = acres of habitat at end of time interval, HSI_1 = habitat suitability index at beginning of time interval, and HSI_2 = habitat suitability index at end of time interval; the source of this formula is the U.S. Fish and Wildlife Service's Ecological Services Manual 102, Habitat Evaluation Procedures.

Cumulative Impacts impacts increasing in significance due to the collective effects of a number of activities.

Department the Department of Natural Resources.

Development Levees those levees and associated water control structures whose purpose is to allow control of water levels within the area enclosed by the levees to facilitate drainage or development within the leveed areas. Such levee systems also commonly serve for hurricane or flood protection, but are not so defined for purposes of these guidelines.

Direct and Significant Impact a direct and significant modification or alteration in the physical or biological characteristics of coastal waters which results from an action or series of actions caused by man.

Ecological Value the ability of an area to support vegetation and fish and wildlife populations.

Endangered Species as defined in the Endangered Species Act, as amended, any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary of the U.S. Department of Interior to constitute a pest whose protection under the provisions of the Endangered Species Act, as amended, would present an overwhelming and overriding risk to man.

Expectable Adverse Conditions natural or man-made hazardous conditions which can be expected or predicted to occur at regular intervals. Included are such events as 125 mile per hour hurricanes and associated tides, 100 year floods and reasonably probable accidents.

Fastlands lands surrounded by publicly-owned, maintained, or otherwise validly existing levees or natural formations as of January 1, 1979, or as may be lawfully constructed in the future, which levees or natural formations would normally prevent activities, not to include the pumping of water for drainage purposes, within the surrounded area from having direct and significant impacts on coastal waters.

Feasible and Practical those locations, methods and/or practices which are of established usefulness and efficiency and allow the use or activity to be carried out successfully.

Federal Advisory Agencies include, but are not limited to, the U.S. Fish and Wildlife Service, the U.S. National Marine Fisheries Service, the U.S. Environmental Protection Agency, and the U.S. Natural Resources Conservation Service.

Force Majeure an act of God, war, blockade, lightning, fire, storm, flood, and any other cause which is not within the control of the party claiming force majeure.

Future with Project Scenario portrayal of anticipated changes to ecological values (i.e., habitat values and wetland acreage) throughout the project years in a situation where a given project would be implemented.

Future without Project Scenario portrayal of anticipated changes to ecological values (i.e., habitat values and wetland acreage) throughout the project years in a situation where a given project would not be implemented.

Geologic Review Procedure a process by which alternative methods, including alternative locations, for oil and gas exploration are evaluated on their environmental, technical, and economic merits on an individual basis; alternative methods, including alternative locations, of oil and gas production and transmission activities which are specifically associated with the proposed exploration activity shall also be evaluated in this process. These alternative methods, including alternative locations, are presented and evaluated at a meeting by a group of representatives of the involved parties. A geologic review group is composed, at a minimum, of representatives of the applicant, a petroleum geologist and a petroleum engineer representing the Coastal Management Division and/or the New Orleans District Corps of Engineers, and a representative of the Coastal Management Division Permit Section, and may include, but is not limited to, representatives of the Louisiana Department of Wildlife and Fisheries, the Louisiana Department of Environmental Quality, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. National Marine Fisheries Service, and the U.S. Environmental Protection Agency.

Governmental Body any public department, agency, bureau, authority, or subdivision of the government of the United States or the state of Louisiana and shall include parishes and municipalities and subdivisions thereof and those governmental agencies constitutionally established.

Guidelines those rules and regulations adopted pursuant to 214.27 of the SLCRMA.

Habitat the natural environment where a plant or animal population lives.

Habitat Types the general wetland vegetative communities which exist in the Louisiana Coastal Zone, including fresh marsh, intermediate marsh, brackish marsh, saline marsh, fresh swamp, and bottomland hardwoods.

Holder as defined at R.S. 9:1272(2), means:

1. a governmental body empowered to hold an interest in immovable property under the laws of this state or the United States; or

2. a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of immovable property, assuring the availability of immovable property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, archaeological, or cultural aspects of unimproved immovable property.

Hurricane or Flood Protection Levees those levees and associated water control structures whose primary purpose is to prevent occasional surges of flood or storm generated high water. Such levee systems do not include those built to permit drainage or development of enclosed wetland areas.

Hydrologic and Sediment Transport Modifications those uses and activities intended to change water circulation, direction of flow, velocity, level, or quality or quantity of transported sediment. Examples include locks, water gates, impoundments, jetties, groins, fixed and variable weirs, dams, diversion pipes, siphons, canals, and surface and groundwater withdrawals.

Hydrologic Basin one of the nine general drainage areas within the Louisiana Coastal Zone as delineated on pages A-2 and A-3 of the Louisiana Coastal Wetlands Conservation and Restoration Plan, April 1990.

Impoundment Levees those levees and associated water control structures whose primary purpose is to contain water within the levee system either for the prevention of the release of pollutants, to create fresh water reservoirs, or for management of fish or wildlife resources.

Infrastructure those systems which provide needed support for human social institutions and developments, including transportation systems, public utilities, water and sewerage systems, communications, educational facilities, health services, law enforcement and emergency preparedness.

In-Lieu Permit those permits issued in-lieu of coastal use permits pursuant to 214.31 of the SLCRMA.

Levees any use or activity which creates an embankment to control or prevent water movement, to retain water or other material, or to raise a road or other lineal use above normal or flood water levels. Examples include levees, dikes and embankments of any sort.

Linear Facilities those uses and activities which result in creation of structures or works which are primarily linear in nature. Examples include pipelines, roads, canals, channels, and powerlines.

Local Government a governmental body having general jurisdiction and operating at the parish level.

Local Program same as *approved local program*.

Marsh wetlands subject to frequent inundation in which the dominant vegetation consists of reeds, sedges, grasses, cattails, and other low growth.

Minerals oil, gas, sulfur, geothermal, geopressured, salt, or other naturally occurring energy or chemical resources which are produced from below the surface in the coastal zone. Not included are such surface resources as clam or oyster shells, dirt, sand, or gravel.

Mitigation all actions taken by a permittee to avoid, minimize, restore, and compensate for ecological values lost due to a permitted activity.

Mitigation Bank an area identified, with specific measures implemented to create, restore, protect, and/or enhance wetlands, for the purpose of producing ecological values, measured as average annual habitat units or cumulative habitat units (mitigation credits). Those credits may be donated, sold, traded, or otherwise used for the purpose of compensating for the ecological values lost due to a permitted activity.

Off-Site not within or adjoining the area directly modified by the permitted activity and not directly related to implementation of the permitted activity.

Oil, Gas and Other Mineral Activities those uses and activities which are directly involved in the exploration, production, and refining of oil, gas, and other minerals. Examples include geophysical surveying, establishment of drill sites and access to them, drilling, on site storage of supplies, products and waste materials, production, refining, and spill cleanup.

On-Site within or adjoining the area directly modified by the permitted activity or directly related to implementation of the permitted activity.

Overriding Public Interest the public interest benefits of a given activity clearly outweigh the public interest benefits of compensating for wetland values lost as a result of the activity, as in the case of certain mineral extraction, production, and transportation activities or construction of flood protection facilities critical for protection of existing infrastructure.

Particular Areas areas within the coastal zone of a parish with an approved local program which have unique and valuable characteristics requiring special management procedures. Such areas shall be identified, designated, and managed by the local government following procedures consistent with those for special areas.

Permit a coastal use permit, or an in-lieu permit.

Permitting Body either the Department of Natural Resources or a local government with an approved local program with authority to issue, or that has issued, a coastal use permit authorized by the SLCRMA.

Person any natural individual, partnership, association, trust, corporation, public agency or authority, governmental body, or any other legal or juridical person created by law.

Project Years the anticipated number of years that the proposed activity would have a negative or positive impact on the ecological value of the site. Project years shall be 20 years for marsh habitats and 50 years for forested habitats, unless it is clearly demonstrated by the applicant and accepted by the secretary to be shorter in duration.

Public Hearing a hearing announced to the public at least 30 days in advance, at which all interested persons shall be afforded a reasonable opportunity to submit data, views or arguments, orally or in writing. At the time of the announcement of the public hearing all materials pertinent to the hearing, including documents, studies, and other data, in the possession of the party calling the hearing, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the party which conducted the hearing.

Radioactive Wastes wastes containing source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

Residential Coastal Use any coastal use associated with the construction or modification of one single-family, duplex, or triplex residence or camp. It shall also include the construction or modification to any outbuilding, bulkhead, pier, or appurtenance on a lot on which there exists a single-family, duplex, or triplex residence or camp or on a water body which is immediately adjacent to such lot.

Secondary Impact an impact which would:

1. result from the proposed activity;

2. cause significant modifications or alterations to the physical characteristics of acreage beyond the limit of the area depicted as being altered in the accepted permit application drawings; and

3. be identified and quantified by the secretary based on an evaluation of similar and previously implemented activities.

Secretary the Secretary of the Department of Natural Resources, or his designee.

Sediment Deposition Systems controlled diversions of sediment-laden water in order to initiate land building or sediment nourishment or to minimize undesirable deposition of sediment in navigation channels or habitat areas. Typical activities include diversion channels, jetties, groins, or sediment pumps.

Shoreline Modifications those uses and activities planned or constructed with the intention of directly or indirectly changing or preventing change of a shoreline. Examples include bulkheading, piers, docks, wharves, slips, and short canals, and jetties.

SLCRMA the State and Local Coastal Resources Management Act of 1978, Act 361 of 1978 as amended, R.S. 49:214.21-49:214.42.

Spoil Deposition the deposition of any excavated or dredged material.

State Advisory Agencies include, but are not limited to, the Louisiana Department of Wildlife and Fisheries and the Louisiana Department of Environmental Quality.

Surface Alterations those uses and activities which change the surface or usability of a land area or water bottom. Examples include fill deposition, land reclamation, beach nourishment, dredging (primarily areal), clearing, draining, surface mining, construction and operation of transportation, mineral, energy and industrial facilities, and industrial, commercial, and urban developments.

Third Party Right of Enforcement as defined at R.S. 9:1272.(3), means a right provided in a conservation servitude to enforce any of the terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

Toxic Substances those substances which, by their chemical, biological or radioactive properties, have the potential to endanger human health or other living organisms or ecosystems, by means of acute or chronic adverse effects, including poisoning, mutagenic, teratogenic, or carcinogenic effect.

Unavoidable Net Loss of Ecological Values the net loss of ecological value that is anticipated to occur as the result of a permitted/authorized activity, despite all efforts, required by the guidelines, to avoid, minimize, and restore the permitted/authorized impacts.

Uplands lands 5 feet or more above sea level, fastlands, or all lands outside the coastal zone.

Use any use or activity within the coastal zone which has a direct and significant impact on coastal waters.

Waste any material for which no use or reuse is intended and which is to be discarded.

Waste Disposal those uses and activities which involve the collections, storage and discarding or disposing of any solid or liquid material. Examples include littering; landfill; open dumping; incineration; industrial waste treatment facilities; sewerage treatment; storage in pits, ponds, or lagoons; ocean dumping and subsurface disposal.

Water or Marsh Management Plan a systematic development and control plan to improve and increase biological productivity, or to minimize land loss, saltwater intrusion, erosion or other such environmental problems, or to enhance recreation.

Wetlands

1. for the purposes of this Chapter except for §724, open water areas or areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions;

2. for the purposes of §724 (as defined in R.S. 49:214.41), an open water area or an area that is inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal circumstances

does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, but specifically excluding fastlands and lands more than 5 feet above sea level which occur in the designated coastal zone of the state. Wetlands generally include swamps, marshes, bogs, and similar areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21-49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Office of Coastal Restoration and Management, LR 28:516 (March 2002).

Subchapter B. Coastal Use Guidelines

Coastal use guidelines as approved by the House Natural Resources Committee on July 9, 1980, the Senate Natural Resources Committee on July 11, 1980, and the governor on July 24, 1980.

§701. Guidelines Applicable to All Uses

A. The guidelines must be read in their entirety. Any proposed use may be subject to the requirements of more than one guideline or section of guidelines and all applicable guidelines must be complied with.

B. Conformance with applicable water and air quality laws, standards and regulations, and with those other laws, standards and regulations which have been incorporated into the coastal resources program shall be deemed in conformance with the program except to the extent that these guidelines would impose additional requirements.

C. The guidelines include both general provisions applicable to all uses and specific provisions applicable only to certain types of uses. The general guidelines apply in all situations. The specific guidelines apply only to the situations they address. Specific and general guidelines should be interpreted to be consistent with each other. In the event there is an inconsistency, the specific should prevail.

D. These guidelines are not intended to nor shall they be interpreted so as to result in an involuntary acquisition or taking of property.

E. No use or activity shall be carried out or conducted in such a manner as to constitute a violation of the terms of a grant or donation of any lands or waterbottoms to the state or any subdivision thereof. Revocations of such grants and donations shall be avoided.

F. Information regarding the following general factors shall be utilized by the permitting authority in evaluating whether the proposed use is in compliance with the guidelines:

1. type, nature, and location of use;

2. elevation, soil, and water conditions and flood and storm hazard characteristics of site;

3. techniques and materials used in construction, operation, and maintenance of use;

4. existing drainage patterns and water regimes of surrounding area including flow, circulation, quality, quantity, and salinity; and impacts on them;

5. availability of feasible alternative sites or methods of implementing the use;

6. designation of the area for certain uses as part of a local program;

7. economic need for use and extent of impacts of use on economy of locality;

8. extent of resulting public and private benefits;

9. extent of coastal water dependency of the use;

10. existence of necessary infrastructure to support the use and public costs resulting from use;

11. extent of impacts on existing and traditional uses of the area and on future uses for which the area is suited;

12. proximity to and extent of impacts on important natural features such as beaches, barrier islands, tidal passes, wildlife and aquatic habitats, and forest lands;

13. the extent to which regional, state, and national interests are served including the national interest in resources and the siting of facilities in the coastal zone as identified in the coastal resources program;

14. proximity to, and extent of impacts on, special areas, particular areas, or other areas of particular concern of the state program or local programs;

15. likelihood of, and extent of impacts of, resulting secondary impacts and cumulative impacts;

16. proximity to and extent of impacts on public lands or works, or historic, recreational, or cultural resources;

17. extent of impacts on navigation, fishing, public access, and recreational opportunities;

18. extent of compatibility with natural and cultural setting;

19. extent of long term benefits or adverse impacts.

G. It is the policy of the coastal resources program to avoid the following adverse impacts. To this end, all uses and activities shall be planned, sited, designed, constructed, operated, and maintained to avoid to the maximum extent practicable significant:

1. reductions in the natural supply of sediment and nutrients to the coastal system by alterations of freshwater flow;

2. adverse economic impacts on the locality of the use and affected governmental bodies;

3. detrimental discharges of inorganic nutrient compounds into coastal waters;

4. alterations in the natural concentration of oxygen in coastal waters;

5. destruction or adverse alterations of streams, wetland, tidal passes, inshore waters and waterbottoms, beaches, dunes, barrier islands, and other natural biologically valuable areas or protective coastal features;

6. adverse disruption of existing social patterns;

7. alterations of the natural temperature regime of coastal waters;

8. detrimental changes in existing salinity regimes;

9. detrimental changes in littoral and sediment transport processes;

10. adverse effects of cumulative impacts;

11. detrimental discharges of suspended solids into coastal waters, including turbidity resulting from dredging;

12. reductions or blockage of water flow or natural circulation patterns within or into an estuarine system or a wetland forest;

13. discharges of pathogens or toxic substances into coastal waters;

14. adverse alteration or destruction of archaeological, historical, or other cultural resources;

15. fostering of detrimental secondary impacts in undisturbed or biologically highly productive wetland areas;

16. adverse alteration or destruction of unique or valuable habitats, critical habitat for endangered species, important wildlife or fishery breeding or nursery areas, designated wildlife management or sanctuary areas, or forestlands;

17. adverse alteration or destruction of public parks, shoreline access points, public works, designated recreation areas, scenic rivers, or other areas of public use and concern;

18. adverse disruptions of coastal wildlife and fishery migratory patterns;

19. land loss, erosion, and subsidence;

20. increases in the potential for flood, hurricane and other storm damage, or increases in the likelihood that damage will occur from such hazards;

21. reduction in the long term biological productivity of the coastal ecosystem.

H.1. In those guidelines in which the modifier "maximum extent practicable" is used, the proposed use is in compliance with the guideline if the standard modified by the term is complied with. If the modified standard is not complied with, the use will be in compliance with the guideline if the permitting authority finds, after a systematic consideration of all pertinent information regarding the use, the site and the impacts of the use as set forth in Subsection F above, and a balancing of their relative significance, that the benefits resulting from the proposed use would clearly outweigh the adverse impacts resulting from noncompliance with the modified standard and there are no feasible and practical alternative locations, methods, and practices for the use that are in compliance with the modified standard and:

a. significant public benefits will result from the use; or

b. the use would serve important regional, state, or national interests, including the national interest in resources and the siting of facilities in the coastal zone identified in the coastal resources program, or;

c. the use is coastal water dependent.

2. The systematic consideration process shall also result in a determination of those conditions necessary for the use to be in compliance with the guideline. Those conditions shall assure that the use is carried out utilizing those locations, methods, and practices which maximize conformance to the modified standard; are technically, economically, environmentally, socially, and legally feasible and practical; and minimize or offset those adverse impacts listed in §701.G and in the Subsection at issue.

I. Uses shall to the maximum extent practicable be designed and carried out to permit multiple concurrent uses which are appropriate for the location and to avoid unnecessary conflicts with other uses of the vicinity.

J. These guidelines are not intended to be, nor shall they be, interpreted to allow expansion of governmental authority beyond that established by R.S. 49:214.21-49:214.42, as amended; nor shall these guidelines be interpreted so as to require permits for specific uses legally commenced or established prior to the effective date of the coastal use permit program nor to normal maintenance or repair of such uses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§703. Guidelines for Levees

A. The leveeing of unmodified or biologically productive wetlands shall be avoided to the maximum extent practicable.

B. Levees shall be planned and sited to avoid segmentation of wetland areas and systems to the maximum extent practicable.

C. Levees constructed for the purpose of developing or otherwise changing the use of a wetland area shall be avoided to the maximum extent practicable.

D. Hurricane and flood protection levees shall be located at the nonwetland/wetland interface or landward to the maximum extent practicable.

E. Impoundment levees shall only be constructed in wetland areas as part of approved water or marsh management projects or to prevent release of pollutants.

F. Hurricane or flood protection levee systems shall be designed, built and thereafter operated and maintained utilizing best practical techniques to minimize disruptions of existing hydrologic patterns, and the interchange of water, beneficial nutrients, and aquatic organisms between enclosed wetlands and those outside the levee system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§705. Guidelines for Linear Facilities

A. Linear use alignments shall be planned to avoid adverse impacts on areas of high biological productivity or irreplaceable resource areas.

B. Linear facilities involving the use of dredging or filling shall be avoided in wetland and estuarine areas to the maximum extent practicable.

C. Linear facilities involving dredging shall be of the minimum practical size and length.

D. To the maximum extent practicable, pipelines shall be installed through the "push ditch" method and the ditch backfilled.

E. Existing corridors, rights-of-way, canals, and streams shall be utilized to the maximum extent practicable for linear facilities.

F. Linear facilities and alignments shall be, to the maximum extent practicable, designed and constructed to permit multiple uses consistent with the nature of the facility.

G. Linear facilities involving dredging shall not traverse or adversely affect any barrier island.

H. Linear facilities involving dredging shall not traverse beaches, tidal passes, protective reefs, or other natural gulf shoreline unless no other alternative exists. If a beach, tidal pass, reef, or other natural gulf shoreline must be traversed for a non-navigation canal, they shall be restored at least to their natural condition immediately upon completion of construction. Tidal passes shall not be permanently widened or deepened except when necessary to conduct the use. The best available restoration techniques which improve the traversed area's ability to serve as a shoreline shall be used.

I. Linear facilities shall be planned, designed, located, and built using the best practical techniques to minimize disruption of natural hydrologic and sediment transport patterns, sheet flow, and water quality and to minimize adverse impacts on wetlands.

J. Linear facilities shall be planned, designed, and built using the best practical techniques to prevent bank slumping and erosion, and saltwater intrusion, and to minimize the potential for inland movement of storm-generated surges. Consideration shall be given to the use of locks in navigation canals and channels which connect more saline areas with fresher areas.

K. All nonnavigation canals, channels, and ditches which connect more saline areas with fresher areas shall be plugged at all waterway crossings and at intervals between crossings in order to compartmentalize them. The plugs shall be properly maintained.

L. The multiple use of existing canals, directional drilling, and other practical techniques shall be utilized to the maximum extent practicable to minimize the number and size of access canals, to minimize changes of natural systems, and to minimize adverse impacts on natural areas and wildlife and fisheries habitat.

M. All pipelines shall be constructed in accordance with Parts 191, 192, and 195 of Title 49 of the Code of Federal Regulations, as amended, and in conformance with the Commissioner of Conservation's Pipeline Safety Rules and Regulations and those safety requirements established by R.S. 45:408, whichever would require higher standards.

N. Areas dredged for linear facilities shall be backfilled or otherwise restored to the pre-existing conditions upon cessation of use for navigation purposes to the maximum extent practicable.

O. The best practical techniques for site restoration and revegetation shall be utilized for all linear facilities.

P. Confined and dead end canals shall be avoided to the maximum extent practicable. Approved canals must be designed and constructed using the best practical techniques to avoid water stagnation and eutrophication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§707. Guidelines for Dredged Spoil Deposition

A. Spoil shall be deposited utilizing the best practical techniques to avoid disruption of water movement, flow, circulation, and quality.

B. Spoil shall be used beneficially to the maximum extent practicable to improve productivity or create new habitat, reduce or compensate for environmental damage done by dredging activities, or prevent environmental damage. Otherwise, existing spoil disposal areas or upland disposal shall be utilized to the maximum extent practicable rather than creating new disposal areas.

C. Spoil shall not be disposed of in a manner which could result in the impounding or draining of wetlands or the creation of development sites unless the spoil deposition is part of an approved levee or land surface alteration project.

D. Spoil shall not be disposed of on marsh, known oyster or clam reefs, or in areas of submersed vegetation to the maximum extent practicable.

E. Spoil shall not be disposed of in such a manner as to create a hindrance to navigation or fishing, or hinder timber growth.

F. Spoil disposal areas shall be designed and constructed and maintained using the best practical techniques to retain the spoil at the site, reduce turbidity, and reduce shoreline erosion when appropriate.

G. The alienation of state-owned property shall not result from spoil deposition activities without the consent of the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§709. Guidelines for Shoreline Modification

A. Nonstructural methods of shoreline protection shall be utilized to the maximum extent practicable.

B. Shoreline modification structures shall be designed and built using best practical techniques to minimize adverse environmental impacts.

C. Shoreline modification structures shall be lighted or marked in accordance with U.S. Coast Guard regulations, not interfere with navigation, and should foster fishing, other recreational opportunities, and public access.

D. Shoreline modification structures shall be built using best practical materials and techniques to avoid the introduction of pollutants and toxic substances into coastal waters.

E. Piers and docks and other harbor structures shall be designed and built using best practical techniques to avoid obstruction of water circulation.

F. Marinas and similar commercial and recreational developments shall to the maximum extent practicable not be located so as to result in adverse impacts on open productive oyster beds, or submersed grass beds.

G. Neglected or abandoned shoreline modification structures, piers, docks, and mooring and other harbor structures shall be removed at the owner's expense, when appropriate.

H. Shoreline stabilization structures shall not be built for the purpose of creating fill areas for development unless part of an approved surface alteration use.

I. Jetties, groins, breakwaters, and similar structures shall be planned, designed, and constructed so as to avoid to the maximum extent practicable downstream land loss and erosion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§711. Guidelines for Surface Alterations

A. Industrial, commercial, urban, residential, and recreational uses are necessary to provide adequate economic growth and development. To this end, such uses will be encouraged in those areas of the coastal zone that are suitable for development. Those uses shall be consistent with the other guidelines and shall, to the maximum extent practicable, take place only:

1. on lands 5 feet or more above sea level or within fast lands; or

2. on lands which have foundation conditions sufficiently stable to support the use, and where flood and storm hazards are minimal or where protection from these hazards can be reasonably well achieved, and where the public safety would not be unreasonably endangered; and

a. the land is already in high intensity of development use; or

b. there is adequate supporting infrastructure; or

c. the vicinity has a tradition of use for similar habitation or development.

B. Public and private works projects such as levees, drainage improvements, roads, airports, ports, and public utilities are necessary to protect and support needed development and shall be encouraged. Such projects shall, to the maximum extent practicable, take place only when:

1. they protect or serve those areas suitable for development pursuant to §711.A; and

2. they are consistent with the other guidelines; and

3. they are consistent with all relevant adopted state, local, and regional plans.

C. Reserved.

D. To the maximum extent practicable wetland areas shall not be drained or filled. Any approved drain or fill project shall be designed and constructed using best practical techniques to minimize present and future property damage and adverse environmental impacts.

E. Coastal water dependent uses shall be given special consideration in permitting because of their reduced choice of alternatives.

F. Areas modified by surface alteration activities shall, to the maximum extent practicable, be revegetated, refilled, cleaned, and restored to their predevelopment condition upon termination of the use.

G. Site clearing shall to the maximum extent practicable be limited to those areas immediately required for physical development.

H. Surface alterations shall, to the maximum extent practicable, be located away from critical wildlife areas and vegetation areas. Alterations in wildlife preserves and management areas shall be conducted in strict accord with the requirements of the wildlife management body.

I. Surface alterations which have high adverse impacts on natural functions shall not occur, to the maximum extent practicable, on barrier islands and beaches, isolated cheniers, isolated natural ridges or levees, or in wildlife and aquatic species breeding or spawning areas, or in important migratory routes.

J. The creation of low dissolved oxygen conditions in the water or traps for heavy metals shall be avoided to the maximum extent practicable.

K. Surface mining and shell dredging shall be carried out utilizing the best practical techniques to minimize adverse environmental impacts.

L. The creation of underwater obstructions which adversely affect fishing or navigation shall be avoided to the maximum extent practicable.

M. Surface alteration sites and facilities shall be designed, constructed, and operated using the best practical techniques to prevent the release of pollutants or toxic substances into the environment and minimize other adverse impacts.

N. To the maximum extent practicable only material that is free of contaminants and compatible with the environmental setting shall be used as fill.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§713. Guidelines for Hydrologic and Sediment Transport Modifications

A. The controlled diversion of sediment-laden waters to initiate new cycles of marsh building and sediment nourishment shall be encouraged and utilized whenever such diversion will enhance the viability and productivity of the outfall area. Such diversions shall incorporate a plan for monitoring and reduction and/or amelioration of the effects of pollutants present in the freshwater source.

B. Sediment deposition systems may be used to offset land loss, to create or restore wetland areas or enhance building characteristics of a development site. Such systems shall only be utilized as part of an approved plan. Sediment from these systems shall only be discharged in the area where the proposed use is to be accomplished.

C. Undesirable deposition of sediments in sensitive habitat or navigation areas shall be avoided through the use of the best preventive techniques.

D. The diversion of freshwater through siphons and controlled conduits and channels, and overland flow to offset saltwater intrusion and to introduce nutrients into wetlands shall be encouraged and utilized whenever such diversion will enhance the viability and productivity of the outfall area. Such diversions shall incorporate a plan for monitoring and reduction and/or amelioration of the effects of pollutants present in the freshwater source.

E. Water or marsh management plans shall result in an overall benefit to the productivity of the area.

F. Water control structures shall be assessed separately based on their individual merits and impacts and in relation to their overall water or marsh management plan of which they are a part.

G. Weirs and similar water control structures shall be designed and built using the best practical techniques to prevent "cut arounds," permit tidal exchange in tidal areas, and minimize obstruction of the migration of aquatic organisms.

H. Impoundments which prevent normal tidal exchange and/or the migration of aquatic organisms shall not be constructed in brackish and saline areas to the maximum extent practicable.

I. Withdrawal of surface and ground water shall not result in saltwater intrusion or land subsidence to the maximum extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§715. Guidelines for Disposal of Wastes

A. The location and operation of waste storage, treatment, and disposal facilities shall be avoided in wetlands to the maximum extent practicable, and best practical techniques shall be used to minimize adverse impacts which may result from such use.

B. The generation, transportation, treatment, storage, and disposal of hazardous wastes shall be pursuant to the substantive requirements of the Department of Environmental Quality adopted pursuant to the provisions of R.S. 30:217, et seq.; as amended and approved pursuant to the Resource Conservation and Recovery Act of 1976 P.L. 94-580, as amended, and of the Office of Conservation for injection below surface.

C. Waste facilities located in wetlands shall be designed and built to withstand all expectable adverse conditions without releasing pollutants.

D. Waste facilities shall be designed and constructed using best practical techniques to prevent leaching, control leachate production, and prevent the movement of leachate away from the facility.

E. The use of overland flow systems for nontoxic, biodegradable wastes, and the use of sump lagoons and reservoirs utilizing aquatic vegetation to remove pollutants and nutrients shall be encouraged.

F. All waste disposal sites shall be marked and, to the maximum extent practicable, all components of waste shall be identified.

G. Waste facilities in wetlands with identifiable pollution problems that are not feasible and practical to correct shall be closed and either removed or sealed, and shall be properly revegetated using the best practical techniques.

H. Waste shall be disposed of only at approved disposal sites.

I. Radioactive wastes shall not be temporarily or permanently disposed of in the coastal zone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§717. Guidelines for Uses that Result in the Alteration of Waters Draining into Coastal Waters

A. Upland and upstream water management programs which affect coastal waters and wetlands shall be designed and constructed to preserve or enhance existing water quality, volume, and rate of flow to the maximum extent practicable.

B. Runoff from developed areas shall to the maximum extent practicable be managed to simulate natural water patterns, quantity, quality, and rate of flow.

C. Runoff and erosion from agricultural lands shall be minimized through the best practical techniques.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

§719. Guidelines for Oil, Gas, and Other Mineral Activities

A. Geophysical surveying shall utilize the best practical techniques to minimize disturbance or damage to wetlands, fish and wildlife, and other coastal resources.

B. To the maximum extent practicable, the number of mineral exploration and production sites in wetland areas requiring floatation access shall be held to the minimum number, consistent with good recovery and conservation practices and the need for energy development, by directional drilling, multiple use of existing access canals, and other practical techniques.

C. Exploration, production, and refining activities shall, to the maximum extent practicable, be located away from critical wildlife areas and vegetation areas. Mineral operations in wildlife preserves and management areas shall be conducted in strict accordance with the requirements of the wildlife management body.

D. Mineral exploration and production facilities shall be to the maximum extent practicable designed, constructed, and maintained in such a manner to maintain natural water flow regimes, avoid blocking surface drainage, and avoid erosion.

E. Access routes to mineral exploration, production, and refining sites shall be designed and aligned so as to avoid adverse impacts on critical wildlife and vegetation areas to the maximum extent practicable.

F. Drilling and production sites shall be prepared, constructed, and operated using the best practical techniques to prevent the release of pollutants or toxic substances into the environment.

G. All drilling activities, supplies, and equipment shall be kept on barges, on drilling rigs, within ring levees, or on the well site.

H. Drilling ring levees shall to the maximum extent practicable be replaced with small production levees or removed entirely.

I. All drilling and production equipment, structures, and storage facilities shall be designed and constructed utilizing best practical techniques to withstand all expectable adverse conditions without releasing pollutants.

J. Mineral exploration, production, and refining facilities shall be designed and constructed using best practical techniques to minimize adverse environmental impacts.

K. Effective environmental protection and emergency or contingency plans shall be developed and complied with for all mineral operations.

L. The use of dispersants, emulsifiers, and other similar chemical agents on oil spills is prohibited without the prior approval of the Coast Guard or Environmental Protection Agency on-scene coordinator, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan.

M. Mineral exploration and production sites shall be cleared, revegetated, detoxified, and otherwise restored as near as practicable to their original condition upon termination of operations to the maximum extent practicable.

N. The creation of underwater obstructions which adversely affect fishing or navigation shall be avoided to the maximum extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

Subchapter C. Coastal Use Permits and Mitigation

§723. Rules and Procedures for Coastal Use Permits

A. General

1. Coastal Use Permits. This regulation provides the requirements and procedures for the issuance, denial, renewal, modification, suspension, and revocation of coastal use permits and general coastal use permits.

2. Permit Requirement. No use of state or local concern shall be commenced or carried out in the coastal zone without a valid coastal use permit or in-lieu permit unless the activity is exempted from permitting by the provisions of the SLCRMA or by Subsection B of this Section. The following shall be considered as uses of state or local concern subject to the requirement of this Paragraph:

a. dredging or filling and discharges of dredged or fill material;

b. levee siting, construction, operation, and maintenance;

c. hurricane and flood protection facilities, including the siting, construction, operation, and maintenance of such facilities;

d. urban developments, including the siting, construction or operation of residential, commercial, industrial, and governmental structures and transportation facilities;

e. energy development activities, including any siting, construction, or operation of generating, processing and transmission facilities, pipeline facilities, and exploration for and production of oil, natural gas, and geothermal energy;

f. mining activities, including surface, subsurface, and underground mining, sand or gravel mining, and shell dredging;

g. wastewater discharge, including point and nonpoint sources;

h. surface water control or consumption, including marsh management projects;

i. shoreline modification projects and harbor structures;

j. waste disposal activities;

k. recreational developments, including siting, construction and operation of public and private recreational facilities and marinas;

l. industrial development, including siting, construction, or operation of such facilities;

m. any other activities or projects that would require a permit or other form of consent or authorization from the U.S. Army Corps of Engineers, the Environmental Protection Agency or the Louisiana Department of Natural Resources (see page 83 Item 13 of the Louisiana Coastal Resources Program Final Environmental Impact Statement);

n. activities which impact barrier islands, salt domes, cheniers, and beaches;

o. drainage projects;

3. In-Lieu Permits. Coastal use permits shall not be required for the location, drilling, exploration and production of oil, gas, sulphur and other minerals subject to regulation by the Office of Conservation of the Department of Natural Resources as of January 1, 1979. The parameters and procedures of the in-lieu permit process are as provided for under existing Memorandum of Understanding between the Coastal Management Section and the Office of Conservation and the rules and procedures of the Office of Conservation.

B. Activities Not Requiring Permits

1. General

a. The following activities normally do not have direct and significant impacts on coastal waters; hence, a coastal use permit is not required, except as set forth in the following clauses:

i. agricultural, forestry, and aquaculture activities on lands consistently used in the past for such activities;

ii. hunting, fishing, trapping, and the preservation of scenic historic, and scientific areas and wildlife preserves;

iii. normal maintenance or repair of existing structures including emergency repairs of damage caused by accident, fire, or the elements;

iv. construction of a residence or camp;

v. construction and modification of navigational aids such as channel markers and anchor buoys;

vi. activities which do not have a direct and significant impact on coastal waters.

b. Uses and activities within the special area established by R.S. 49:214.29(c) which have been permitted by the Offshore Terminal Authority in keeping with its environmental protection plan shall not require a coastal use permit.

2. Activities on Lands 5 Feet or More above Sea Level or within Fastlands

a. Activities occurring wholly on lands 5 feet or more above sea level or within fastlands do not normally have direct and significant impacts on coastal waters. Consequently, a coastal use permit for such uses generally need not be applied for.

b. However, if a proposed activity exempted from permitting in Subparagraph a, above, will result in discharges into coastal waters, or significantly change existing water flow into coastal waters, then the person proposing the activity shall notify the secretary and provide such information regarding the proposed activity as may be required by the secretary in deciding whether the activity is a use subject to a coastal permit.

c. Should it be found that a particular activity exempted by Subparagraph a, above, may have a direct and significant impact on coastal waters, the department may conduct such investigation as may be appropriate to ascertain the facts and may require the persons conducting such activity to provide appropriate factual information regarding the activity so that a determination may be made as to whether the activity is a use subject to a permit.

d. The secretary shall determine whether a coastal use permit is required for a particular activity. A coastal use permit will be required only for those elements of the activity which have direct and significant impacts on coastal waters.

e. The exemption described in this Section shall not refer to activities occurring on cheniers, salt domes, barrier islands, beaches, and similar isolated, raised land forms in the coastal zone. It does refer to natural ridges and levees.

3. Emergency Uses

a. Coastal use permits are not required in advance for conducting uses necessary to correct emergency situations.

i. Emergency situations are those brought about by natural or man-made causes, such as storms, floods, fires, wrecks, explosions, spills, which would result in hazard to life, loss of property, or damage to the environment if immediate corrective action were not taken.

ii. This exemption applies only to those corrective actions which are immediately required for the protection of lives, property, or the environment necessitated by the emergency situation.

b. Prior to undertaking such emergency uses, or as soon as possible thereafter, the person carrying out the use shall notify the secretary and the local government, if the use is conducted in a parish with an approved local program, and give a brief description of the emergency use and the necessity for carrying it out without a coastal use permit.

c. As soon as possible after the emergency situation arises, any person who has conducted an emergency use shall report on the emergency use to the approved local program or to the administrator. A determination shall be made as to whether the emergency use will continue to have direct and significant impacts on coastal waters. If so, the user shall apply for an after-the-fact permit. The removal of any structure or works occasioned by the emergency and the restoration of the condition existing prior to the emergency use may be ordered if the permit is denied in whole or in part.

4. Normal Maintenance and Repair

a. Normal repairs and the rehabilitation, replacement, or maintenance of existing structures shall not require a coastal use permit provided that:

i. the structure or work was lawfully in existence, currently serviceable, and in active use during the year preceding the repair, replacement or maintenance; and

ii. the repair or maintenance does not result in an encroachment into a wetland area greater than that of the previous structure or work; and

iii. the repair or maintenance does not involve dredge or fill activities; and

iv. the repair or maintenance does not result in a structure or facility that is significantly different in magnitude or function from the original.

b. This exemption shall not apply to the repair or maintenance of any structure or facility built or maintained in violation of the coastal management program.

c. Coastal use permits will normally authorize periodic maintenance including maintenance dredging. All maintenance activities authorized by coastal use permits shall be conducted pursuant to the conditions established for that permit. Where maintenance is performed which is not described in an applicable coastal use permit, it shall conform to this Section.

5. Construction of a Residence or Camp

a. The construction of a residence or a camp shall not require a coastal use permit provided that:

i. the terms shall refer solely to structures used for noncommercial and nonprofit purposes and which are commonly referred to as "single family" and not multiple family dwellings;

ii. the terms shall refer solely to the construction of one such structure by or for the owner of the land for the owner's use and not to practices involving the building of more than one such structure as in subdividing, tract development, speculative building, or recreational community development.

b. The exemption shall apply only to the construction of the structure and appurtenances such as septic fields, outbuildings, walk-ways, gazebos, small wharves, landings, boathouses, private driveways, and similar works, but not to any bulkheading or any dredging or filling activity except for small amounts of fill necessary for the structure itself and for the installation and maintenance of septic or sewerage facilities.

6. Navigational Aids

a. The construction and modification of navigational aids shall not require a coastal use permit.

b. The term shall include channel markers, buoys, marker piles, dolphins, piling, pile clusters, etc.; provided that the exemption does not apply to associated dredge or fill uses or the construction of mooring structures, advertising signs, platforms, or similar structures associated with such facilities. All navigational aids constructed pursuant to this section shall conform to United State Coast Guard standards and requirements.

7. Agricultural, Forestry and Aquacultural Activities

a. Agricultural, forestry and aquacultural activities on lands consistently used in the past for such activities shall not require a coastal use permit provided that:

i. the activity is located on lands or in waters which have been used on an ongoing basis for such purposes, consistent with normal practices, prior to the effective date of SLCRMA (Act 361 of 1978);

ii. the activity does not require a permit from the U.S. Army Corps of Engineers and meets federal requirements for such exempted activities; and

iii. the activity is not intended to, nor will it result in, changing the agricultural, forestry, or aquacultural use for which the land has been consistently used for in the past to another use.

b. The exemption includes but is not limited to normal agricultural, forestry, and aquacultural activities such as:

i. plowing;

ii. seeding;

iii. grazing;

iv. cultivating;

v. insect control;

vi. fence building and repair;

vii. thinning;

viii. harvesting for the production of food, fiber and forest products;

ix. maintenance and drainage of existing farm, stock, or fish ponds;

x. digging of small drainage ditches; or

xi. maintenance of existing drainage ditches and farm or forest roads carried out in accordance with good management practices.

8. Blanket Exemption. No use or activity shall require a coastal use permit if:

a. the use or activity was lawfully commenced or established prior to the implementation of the coastal use permit process;

b. the secretary determines that it does not have a direct or significant impact on coastal waters; or

c. the secretary determines one is not required pursuant to §723.G of these rules.

C. Permit Application, Issuance, and Denial

1. General Requirements

a. Any applicant for a coastal use permit shall file a complete application with the state, or at his option, in areas subject to an approved local coastal management program, with the local government. The department will provide the application forms and instructions, including example plats and interpretive assistance, to any interested party. The staffs of the coastal management section and approved local programs shall be available for consultation prior to submission of an application and such consultation is strongly recommended. Application forms may be periodically revised to obtain all information necessary for review of the proposed project.

b. Separate applications shall be made for unrelated projects or projects involving noncontiguous parcels of property. Joint applications may be made in cases of related construction involving contiguous parcels of property.

c. Applicants for coastal use permits for uses of state concern shall include with their application filed with the state a certification that a copy of the application was forwarded by certified mail or hand delivered to the affected local parish(es) with an approved coastal management program.

d. Applicants for coastal use permits for uses of state concern, who elect to submit their application to the affected local parish(es) with an approved local coastal management program, shall include with their application a certification that a copy of the application was forwarded by certified mail or hand delivered to the state.

2. Content of Application. The application submitted shall contain the same information required for a permit from the U.S. Army Corps of Engineers and such additional information as the secretary determines to be reasonably necessary for proper evaluation of an application.

3. Fee Schedule

a. Effective May 1, 2002, the fee schedule of Coastal Use Permits of state concern will be divided into the two categories of residential uses and nonresidential uses.

b. The following schedule of fees will be charged for the processing and evaluation of Coastal Use Permits of state concern in the residential coastal use category.

i. A non-refundable fee shall accompany each application or request for determination submitted to the Coastal Management Division. The fee shall be $20 for each application and $20 for each request for determination.

ii. In addition to the non-refundable application fee, the following fees will be assessed according to the total volume of material disturbed for each permit issued.

(a). Proposed projects which involve fewer than 125 cubic yards of dredging or fill volume shall not be assessed additional fees.

(b). Proposed projects which involve 125 cubic yards of dredging and/or filling but less than 50,000 cubic yards shall be assessed at the rate of $0.04 per cubic yard.

(c). Proposed projects which involve 50,000 cubic yards or more of dredging and/or filling shall be assessed the maximum volume disturbed fee of $2,000.

c. The following schedule of fees will be charged for the processing and evaluation of Coastal Use Permits of state concern in the non-residential coastal use category.

i. A non-refundable fee shall accompany each application or request for determination submitted to the Coastal Management Division. The fee shall be $100 for each application and $100 for each request for determination.

ii. In addition to the non-refundable application fee, the following fees will be assessed according to the total volume of material disturbed for each permit issued.

(a). Proposed projects which involve more than 0 and fewer than 500 cubic yards of dredging or fill volume shall be assessed a fee of $25.

(b). Proposed projects which involve 501 cubic yards of dredging and/or filling but less than 100,001 cubic yards shall be assessed at the rate of $0.05 per cubic yard.

(c). Proposed projects which involve 100,001 cubic yards or more of dredging and/or filling shall be assessed the maximum volume disturbed fee of $5,000.

d. If the appropriate fees are not included along with the coastal use permit application, the application will be considered incomplete, and returned to the applicant. The application fee and additional fees, if any, should be paid separately.

e. A coastal use permit application which has been returned to the applicant by the Coastal Management Division or withdrawn by the applicant and is subsequently resubmitted shall be subject to an additional processing fee

which will consist of an application fee and a permit fee if the application has undergone substantial revisions, pursuant to Subparagraph D.1.a of this Section.

f. Nothing contained in Subparagraphs 3.a-e shall affect the right of local government and parishes with approved programs to assess fees for processing and evaluating coastal use permit applications.

g. In addition to the fees identified at §723.C.3.a, the following fees related to compensatory mitigation shall be charged when appropriate pursuant to §724:

i. compensatory mitigation processing fee (§724.D);

ii. mitigation bank initial evaluation fee, mitigation bank habitat evaluation fee, mitigation bank establishment fee, and mitigation bank periodic review fee (§724.F.3);

iii. advanced mitigation project initial evaluation fee, advanced mitigation project establishment fee, advanced mitigation post-implementation habitat evaluation fee, advanced mitigation periodic review fee (§724.G.5);

iv. compensatory mitigation variance request fee (§724.K.2.h).

4. Processing the Application

a. When an apparently complete application for a permit is received, the permitting body shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned to it.

b. Application processing will begin when an application that is apparently complete is accepted by the permitting body.

c. Within two working days of receipt of an apparently complete application by a local government with an approved program, a copy of the application and all attachments and the local government's decision as to whether the use is one of state or local concern shall be sent to the secretary.

d. Public notice as described in Paragraph 5 below, will be issued within 10 days of receipt of an apparently complete application by the secretary.

e. The permitting body shall evaluate the proposed application pursuant to Paragraph 6 below, to determine the need for a public hearing.

f. The permitting body, pursuant to Paragraph 8 below, shall either send a draft permit to the applicant for acceptance and signature or send notice of denial to the applicant within 30 days of the giving of public notice or within 15 days after the closing of the record of a public hearing, if held, whichever is later.

g. Public notice of permit decisions shall be given pursuant to Paragraph 5.a.ii below.

5. Public Notice and Consideration of Public Comment

a. Public notice of the receipt of all apparently complete applications for coastal use permits shall be given by:

i. mailing a brief description of the application along with a statement indicating where a copy of the application may be inspected to any person who has filed a request to be notified of such permit applications and to all affected governmental bodies;

ii. by posting or causing to be posted a copy of the application at the location of the proposed use;

iii. by sending notice of the application to all appropriate news media in the parish or parishes in which the use would be located; and

iv. by causing the publication of notice of the application once in the official journal of the state; or for uses of local concern in parishes with approved local programs, by causing the publication of notice of the application once in the official journal of the parish.

b. Notice shall be considered given upon publication in the official journal.

c. The notice shall set forth that any comments on the proposed development shall be submitted to the permitting body within 25 days from the date of official journal publication of the notice.

d. A copy of the application will be sent to any person requesting it upon payment of a reasonable fee to cover costs of copying, handling, and mailing, except that information of a confidential or proprietary nature shall be withheld. In the event that attachments to the application are not readily reproducible, they shall be available for inspection at the permitting office.

e. The permitting body shall consider comments received in response to the public notice in its subsequent actions on the permit application. Comments received will be made a part of the official file on the application. If comments received relate to matters within the special expertise of another governmental body, the permitting body may seek advice of that agency. If necessary, the applicant will be given the opportunity to furnish his proposed resolution or rebuttal to all objections from government agencies and other substantive adverse comments before a final decision is made on the application.

f. The secretary shall issue monthly a list of permits issued or denied during the previous month. This list will be distributed to all persons who receive the public notices.

6. Public Hearings on Permit Applications

a. A public hearing may be held in connection with the consideration of an application for a new permit and when it is proposed that an existing permit be modified or revoked.

b. Any person may request in writing within the comment period specified in the public notice that a public hearing be held to consider material matters at issue in a permit application. Upon receipt of any such request, the permitting body shall determine whether the issues raised are substantial, and there is a valid public interest to be served by holding a public hearing.

c. Public hearing(s) are appropriate when there is significant public opposition to a proposed use, or there have been requests from legislators or from local governments or other local authorities, or in controversial cases involving significant economic, social, or environmental issues. The secretary or local government with an approved program has the discretion to require hearings in any particular case.

d. If the determination is made to hold a public hearing, the permitting body shall promptly notify the applicant, set a time and place for the hearing, and give public notice.

e. If a request for a public hearing has been received, and the decision is made that no hearing will be held, public notice of the decision shall be given.

7. Additional Information

a. If an application is found to be incomplete or inaccurate after processing has begun or if it is determined that additional information from the applicant is necessary to assess the application adequately, processing will be stopped pending receipt of the necessary changes or information from the applicant and the processing periods provided for in Paragraph 4.d and f will be interrupted. Upon receipt of the required changes or information, a new processing period will begin.

b. If the applicant fails to respond within 30 days to any request or inquiry of the permitting body, the permitting body may advise the applicant that his application will be considered as having been withdrawn unless and until the applicant responds within 15 days of the date of the letter.

8. Decisions on Permits

a. The permitting body will determine whether or not the permit should be issued. Permits shall be issued only for those uses which are consistent with the guidelines, the state program, and affected approved local programs. The secretary shall not consider the use to be consistent with the state program unless the permit includes condition(s) which, pursuant to §724, ensure the mitigation of wetland ecological values which would be lost due to the use. Permit decisions will be made only after a full and fair consideration of all information before the permitting body, and shall represent an appropriate balancing of social, environmental, and economic factors. The permitting body shall prepare a short and clear statement explaining the basis for its decision on all applications. This statement shall include the permitting body's conclusions on the conformity of the proposed use with the guidelines, the state program and approved local programs. The statement shall be dated, signed, and included in the record prior to final action on the application.

b. If the staff of the permitting body recommends issuance of the permit, the permitting body will forward two copies of the proposed permit to the applicant. A letter of transmittal to the applicant shall include the recommendations to the secretary and the anticipated date on which the application shall be presented to him for action. Unless good cause is then presented in support of changes to the permit and the conditions therein, the permit will be presented to the secretary for action in such form.

c. Final action on the permit application is the signature of the issuing official on the permit or the mailing of the letter notifying the applicant of the denial.

9. Conditions of Permit

a. By accepting the permit, the applicant agrees to:

i. carry out or perform the use in accordance with the plans and specifications approved by the permitting body;

ii. comply with any permit conditions imposed by the permitting body;

iii. adjust, alter, or remove any structure or other physical evidence of the permitted use if, in the opinion of the permitting body, it proves to be beyond the scope of the use as approved or is abandoned;

iv. provide, if required by the permitting body, an acceptable surety bond in an appropriate amount to ensure adjustment, alteration, or removal should the permitting body determine it necessary;

v. hold and save the state of Louisiana, the local government, the department, and their officers and employees harmless from any damage to persons or property which might result from the work, activity, or structure permitted;

vi. certify that any permitted construction has been completed in an acceptable and satisfactory manner and in accordance with the plans and specifications approved by the permitting body. The permitting body may, when appropriate, require such certification be given by a registered professional engineer.

b. The permitting body shall place such other conditions on the permit as are appropriate to ensure compliance with the coastal management program.

c. Permitted uses subject to this Part shall be of two types, continuing and noncontinuing uses, which are defined below as follows.

i. Continuing uses are activities which by nature are carried out on an uninterrupted basis, examples include shell dredging and surface mining activities, projects involving maintenance dredging of existing waterways, and maintenance and repair of existing levees.

ii. Noncontinuing uses are activities which by nature are done on a one-time basis, examples include dredging access canals for oil and gas well drilling, implementing an approved land use alteration plan, and constructing new port or marina facilities.

d. The term of issuance of permits shall be as follows.

i. The term to initiate a coastal use permit for a noncontinuing use shall be two years from the date of issuance, and the term to complete the use shall be five years from the date of issuance. The permit term for initiation may be extended pursuant to Subsection D for an additional two years. The permit term for completion may not be extended.

ii. The term of a coastal use permit for a continuing use shall be five years from the date of issuance. The permit term may not be extended.

D. Modification, Suspension or Revocation of Permits

1. Modifications

a. The terms and conditions of a permit may be modified to allow changes in the permitted use, in the plans and specifications for that use, in the methods by which the use is being implemented, or to assure that the permitted use will be in conformity with the coastal management program. Changes which would significantly increase the impacts of a permitted activity shall be processed as new applications for permits pursuant to Subsection C, not as a modification.

b. A permit may be modified upon request of the permittee:

i. if mutual agreement can be reached on a modification, written notice of the modification will be given to the permittee;

ii. if mutual agreement cannot be reached, a permittee's request for a modification shall be considered denied.

2. Suspensions

a. The permitting body may suspend a permit upon a finding that:

i. the permittee has failed or refuses to comply with the terms and conditions of the permit or any modifications thereof; or

ii. the permittee has submitted false or incomplete information in his application or otherwise; or

iii. the permittee has failed or refused to comply with any lawful order or request of the permitting body or the secretary.

b. The permitting body shall notify the permittee in writing that the permit has been suspended and the reasons therefor and order the permittee to cease immediately all previously authorized activities. The notice shall also advise the permittee that he will be given, upon request made within 10 days of receipt of the notice, an opportunity to respond to the reasons given for the suspension.

c. After consideration of the permittee's response, or, if none, within 30 days after issuance of the notice, the permitting body shall take action to reinstate, modify or revoke the permit and shall notify the permittee of the action taken.

3. Revocation. If, after compliance with the suspension procedures in Subsection B, above, the permitting body determines that revocation or modification of the permit is warranted, written notice of the revocation or modification shall be given to the permittee.

4. Enforcement. If the permittee fails to comply with a cease and desist order or the suspension or revocation of a permit, the permitting body shall seek appropriate civil and criminal relief as provided by §214.36 of the SLCRMA.

5. Extension

a. The secretary shall review extension requests subject to this part on a case-by-case basis. The secretary shall determine, based upon the merits of the request and upon the compliance of the permitted activity with the regulations and policies existing at the time of the request, whether extension may be considered.

b. If the secretary determines that extension may be considered, the Coastal Management Division shall cause to be issued for public comment, for a period of 25 days, a copy of the original permit with its associated drawings in accordance with Subparagraph h below. The secretary shall consider public comments received during this period prior to the final decision on whether to allow permit extension. The sole reason for not allowing extension based upon public comment shall be that there has been a change in the conditions of the area affected by the permit since the permit was originally issued.

c. If the secretary determines that a permit should not be extended, the permittee shall be notified and, provided that the permittee desires a new permit, the use shall be subject to processing as a new permit application pursuant to the procedures set forth in Subsection C. A decision of the secretary not to allow extension of a permit shall not be subject to appeal. A decision of the secretary to allow extension shall be subject to appeal only on the grounds that the proposed activity should be treated as a new application pursuant to Subsection C rather than be considered for extension.

d. The permit terms of noncontinuing uses may be extended once for an additional two years, except that an extension may be granted only for the term to initiate work and not for the term to complete work as described in Clause C.9.c.i above.

e. All coastal use permits in effect on the date these rules are adopted are eligible for extension provided that all requirements in Subparagraph f below are met.

f. Extension requests shall be in the form of a written letter which shall refer to the original coastal use permit application number and specifically state that a permit extension is desired. An extension request fee in the amount of $80 must be included with such a request, and the request must be received by the Coastal Management Division no sooner than 180 days and no later than 60 days prior to the expiration of the permit in question. Requests received later than 60 days prior to the expiration date of the permit shall not be eligible for consideration for extension.

g. Extension requests involving modifications to a permitted activity which would result in greater impacts to the environment than previously permitted will be considered as new applications rather than as extension requests. Extension requests involving modifications to a permitted activity which would result in identical or lesser impacts to the environment than previously permitted may be considered as extension requests, and must, in addition to the requirements in Subparagraph f above, contain adequate information (such as drawings, maps, etc.) to support and explain the proposed modifications.

h. The Coastal Management Division shall issue notice of the extension request to all members of the Joint Public Notice mailing list, and shall publish notice that the extension request has been granted or denied in the Bi-weekly Status Report that is published in the state journal as well as mailed to Joint Public Notice mailing recipients.

E. General Permits

1. General

a. The administrator may, after compliance with the procedures set forth in Paragraphs C.4 and 5, issue general permits for certain clearly described categories of uses requiring coastal use permits. After a general permit has been issued, individual uses falling within those categories will not require full individual permit processing unless the administrator determines, on a case-by-cases basis, that the public interest requires full review.

b. General permits may be issued only for those uses that are substantially similar in nature, that cause only minimal adverse impacts when performed separately, that will have only minimal adverse cumulative impacts and that otherwise do not impair the fulfillment of the objectives and policies of the coastal management program.

c. When an individual use is authorized under a general permit, the authorization shall include condition(s) which, pursuant to §724, ensure the mitigation of wetland ecological values which would be lost due to the individual use.

d. In addition to the fees identified at §723.C.3.a, any person seeking authorization under a general permit shall be charged a compensatory mitigation processing fee, if applicable, pursuant to §724.D.

2. Reporting

a. Each person desiring to commence work on a use subject to a general permit must give notice to the secretary and receive written authorization prior to commencing work. Such authorization shall be issued within 30 days of receipt of the notice.

b. Such notice shall include:

i. the name and address of the person conducting the use;

ii. such descriptive material, maps, and plans as may be required by the secretary for that general permit.

3. Conditions of General Permits

a. The secretary shall prescribe such conditions for each general permit as may be appropriate.

b. A general permit may be revoked if the secretary determines that such revocation is in the public interest and consistent with the coastal management program.

4. Local General Permits. A local government with an approved local program may issue general permits for uses of local concern under its jurisdiction pursuant to the above procedures. Such general permits shall be subject to approval by the secretary.

F. Determinations as to Whether Uses Are of State Concern or Local Concern

1. Filing of Applications with a Local Government with an Approved Local Coastal Program

a. The local government shall make the initial determination as to whether the use is one of state concern or local concern on all applications filed with the local government. This determination shall be based on the criteria set forth in Paragraph 3 below.

b. The determination and a brief explanation of the rationale behind the determination shall be forwarded to the secretary within two working days of receipt of the apparently complete application, pursuant to Subparagraph C.4.d.

c. The secretary shall review the decision and rationale and shall let it stand or reverse it. If the secretary reverses the local decision, notice, including a brief explanation of the rationale for the reversal shall be sent to the local government within two working days of receipt of the application from the local government.

d. The appropriate permitting body for the use, as determined by the secretary, shall thereafter be responsible for the permit review process.

2. Filing of Application with the Secretary. Within two working days of the filing of an apparently complete application with the secretary, the secretary shall make a determination as to whether the use is one of state concern or local concern based on the criteria set forth in Paragraph 3 below. Notice shall be given to affected local programs of the determination whether the use is a use of state or local concern. The secretary shall give full consideration to local program comments or objections to any such determination in making future determinations.

3. Criteria for Determination

a. The following factors shall be used in making a determination as to whether a use is of state or local concern:

i. the specific terms of the uses as classified in the Act;

ii. the relationship of a proposed use to a particular use classified in the Act;

iii. if a use is not predominately classified as either state or local by the Act or the use overlaps the two classifications, it shall be of local concern unless it:

(a). is being carried out with state or federal funds;

(b). involves the use of or has significant impacts on state or federal lands, water bottoms, or works;

(c). is mineral or energy development, production or transportation related;

(d). involves the use of, or has significant impacts, on barrier islands or beaches or any other shoreline which forms part of the baseline for Louisiana's offshore jurisdiction;

(e). will result in major changes in the quantity or quality of water flow and circulation or in salinity or sediment transport regimes; or

(f). has significant interparish or interstate impacts.

b. For purposes of this Paragraph, the term *state* shall mean the state of Louisiana, its agencies, and political subdivisions; but not local governments, their agencies and political subdivisions.

G. Determination as to Whether a Coastal Use Permit Is Required

1. Request by Applicant

a. Any person who proposes to conduct an activity may submit a request in writing to the secretary for a formal finding as to whether the proposed activity is a use of state or local concern within the coastal zone subject to the coastal use permitting program. The person making the request shall submit with the request a complete application for a coastal use permit and shall provide such additional information requested by the secretary as may be appropriate.

b. The requesting party must set forth sufficient facts to support a finding that the proposed activity either:

i. is exempt from coastal use permitting; or

ii. does not have a direct and significant impact on coastal waters; or

iii. is outside the coastal zone boundary.

c. Within 30 days of receipt of the request and the complete application, the requestor shall be sent notice of the decision on the request and public notice of the decision shall be given.

2. Finding without Request

a. In reviewing a permit application for which no request has been submitted, the secretary may find after full consideration of the application, likely impacts of the proposed use, comments received, and applicable rules, regulations and guidelines, that a coastal use permit is not required. If he finds that no permit is required, the secretary shall notify the applicant and give public notice.

b. A local government with an approved program may request that the secretary review an application for a use of local concern and make a determination as to whether a coastal use permit is required, pursuant to the procedures provided for in Paragraph 2.a above. The secretary shall notify the local government of his decision.

3. Decisions

a. Only the secretary may determine that a coastal use permit is not required. A permit shall not be required if the proposed use or activity will not occur within the boundary of the coastal zone, does not have a direct and significant impact on coastal waters, or is exempt from permitting by Subsection C of these rules or by §214.31 (B) or (C), §214.32 (A) or §214.34 of the SLCRMA.

b. The notice sent to the requestor or applicant shall include a short and plain statement of the basis for the decision. Public notice of the decision shall be given pursuant to Subparagraph C.5.f of these rules.

4. Actions after Decision

a. If the determination is that a coastal use permit is required, processing of the application may be commenced or continued pursuant to Subsection C of these rules.

b. If the determination is that a coastal use permit is not required, the requestor or the applicant may proceed to carry out the activity. Provided that the secretary shall not be stopped from subsequently requiring a permit or issuing cease and desist orders if it is found that the activity as implemented is significantly different from that shown on the request or application, does in fact have a direct or significant impact on coastal waters, or otherwise requires a coastal use permit. Other civil or criminal sanctions shall not be available in the absence of fraud, ill practices, deliberate misrepresentation, or failure to comply with any cease and desist or other lawful order of the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21 - 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980), amended LR 8:519 (October 1982), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 16:625 (July 1990), amended by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 28:516 (March 2002).

§724. Rules and Procedures for Mitigation

A. General. This Section provides general procedures for avoiding and minimizing adverse impacts identified in the permit review process, restoring impacted sites when appropriate, quantifying anticipated unavoidable wetland ecological value losses, requiring appropriate and sufficient compensatory mitigation, establishing mitigation banks, establishing advanced mitigation projects, and evaluating and processing requests for variances from the compensatory mitigation requirement.

B. Avoidance, Minimization, and Restoration of, and Compensation for, Potential Wetland Ecological Value Losses

1. The secretary shall not grant a coastal use permit or issue a general permit authorization for an individual activity unless the permit/authorization is conditioned to include:

a. any locations, designs, methods, practices, and techniques which may be required, following a thorough review of §§701-719, to avoid and minimize those adverse impacts identified during the permit review process; and

b. any locations, designs, methods, practices, and techniques which may be required, following a thorough review of §§701-719, to restore impacted sites when appropriate; and

c. a requirement for compensatory mitigation to offset any net loss of wetland ecological value that is anticipated to occur despite efforts to avoid, minimize, and restore permitted/authorized impacts (i.e., unavoidable net loss of wetland ecological value), unless a variance is granted pursuant to §724.K.

2. If the secretary determines that a proposed activity would comply with §§701-719 and would not result in a net loss of wetland ecological values, the secretary shall not require compensatory mitigation.

3. When a proposed oil and gas exploration site would impact vegetated wetlands, the determination regarding the avoidance and minimization of adverse impacts and impact site restoration for the proposed exploration activity and its associated production and transmission activities shall be made through the geological review procedure.

4. In addition to the requirement contained in §724.B.3, the secretary may utilize the geologic review procedure, when requested by the Louisiana Department of Wildlife and Fisheries (LDWF), to render the determination regarding avoidance and minimization of adverse impacts and impact restoration, for proposed oil and gas exploration activities and its associated production and transmission activities which would:

a. occur within 1/4 mile of an oyster seed ground, oyster seed reservation, or a public oyster harvesting area;

b. impact other oyster or other shell reef(s);

c. occur within the boundaries of a wildlife refuge or wildlife management area owned or managed by LDWF; or

d. occur within an area designated as a natural and scenic river in accordance with the provisions of R.S. 56:1840 et seq.

C. Quantification of Anticipated Net Gains and Unavoidable Net Losses of Ecological Value

1. When compensatory mitigation would be accomplished via the use of the Castex-Laterre Mitigation Bank or the Nature Conservancy's Pine Flatwood Mitigation Bank, net gains and unavoidable net losses of ecological value shall be quantified in accordance with the valuation and accounting procedures described in the respective memoranda of agreement.

2. Except as allowed in §724.C.1 and §724.H.3, anticipated net gains and unavoidable net losses of ecological value shall be quantified as cumulative habitat units (CHUs) or average annual habitat units (AAHUs), whichever is most appropriate for the given situation.

3. If CHUs are determined to be appropriate:

a. net gain or net loss of ecological value = (sum of CHUs produced in a future-with-project scenario) - (sum of CHUs produced in a future-without-project scenario);

b. CHUs for each time interval within the project years shall be calculated by the following formula and in general accordance with the U.S. Fish and Wildlife Service's Habitat Evaluation Procedure: CHUs = $(T_2 - T_1)$ H {[$(A_1$ H $HSI_1 + A_2$ H $HSI_2)$ / 3] + [$(A_2$ H $HSI_1 + A_1$ H $HSI_2)$ / 6]}, where T_1 = first year of time interval, T_2 = last year of time interval, A_1 = wetland acres at beginning of time interval, A_2 = wetland acres at end of time interval, HSI_1 = habitat suitability index at beginning of time interval, and HSI_2 = habitat suitability index at end of time interval.

4. If AAHUs are determined to be appropriate:

a. net gain or net loss of ecological value = (AAHUs produced in a future-with-project scenario) - (AAHUs produced in a future-without-project scenario);

b. AAHUs = (sum of CHUs for a given scenario) / (project years).

5. The quantification of "wetland acres," at selected times throughout the project years, shall be based on the following factors:

a. the vegetated wetland acreage depicted, in the accepted permit application, as being directly impacted by the proposed activity;

b. when determined to be appropriate by the secretary, vegetated wetland acreage of secondary impact; see definition of secondary impact in §700; and

c. the vegetated wetland acreage that would have been present at the activity site, at selected times throughout the project years, without implementation of the proposed activity, based on the best available, as determined by the secretary, vegetated wetland loss or gain data.

6. If:

a. the vegetated wetland acreage to be altered by the proposed activity is limited to the area depicted in the accepted permit application; and

b. the only anticipated variation in that acreage would be due to vegetated wetland loss or gain, an "adjusted acreage" can be calculated with the following formula and utilized in lieu of calculating acreage at selected times throughout project years: Adjusted acres = {acres of direct impact - [acres of direct impact x annual land loss rate x (project years / 2)]}.

7. The secretary shall provide upon request, to any interested party, the source and resultant vegetated wetland loss or gain data which would be applied to a specific proposed activity.

8. "Habitat suitability indices" (HSI) shall be determined by applying:

a. for marsh habitats, the May 2, 1994, version of the Wetland Value Assessment Methodology Models, developed by the Coastal Wetland Planning, Protection, and Restoration Act (P.L. 101-646) Environmental Work Group; or

b. for bottomland hardwoods and fresh swamp, the January 10, 1994, version of "Habitat Assessment Models for Fresh Swamp and Bottomland Hardwoods Within the Louisiana Coastal Zone."

9. The secretary may adopt modifications to those models, provided that the resultant "habitat suitability index" values do not vary more than 15 percent from the above referenced versions. Modifications which cause greater than 15 percent variation in "habitat suitability index" values or adoption of alternative models or methodology may be undertaken only in accordance with provisions of R.S. 49:953. The amount of variation shall be determined by comparing the results of the models referenced above with the results of the modified models on a minimum of 10 sites for the appropriate habitat type(s).

D. Compensatory Mitigation Processing Fees

1. In addition to the fees identified at §723.C.3.a.i-ii, when the secretary determines that compensatory mitigation would be required pursuant to §724.B, a fee shall be charged for the evaluation, processing, and determination of compensatory mitigation requirements. The fee shall apply regardless of which compensatory mitigation option is selected and shall be in addition to any cost incurred to implement the required compensatory mitigation. The requested permit or general permit authorization for an individual activity shall not be issued until the secretary has received the compensatory mitigation processing fee. This fee shall be determined as follows.

a. Noncommercial activities which directly impact 1.00 acre or less of vegetated wetlands shall be assessed a compensatory mitigation processing fee of $50.

b. All other activities shall be assessed a compensatory mitigation processing fee according the following table.

Vegetated Wetland Acres Depicted as Directly Altered in Accepted Permit Application	Compensatory Mitigation Processing Fee
0 - 0.50	$ 150
0.51 - 1.00	$ 300
1.01 - 2.00	$ 600
2.01 - 3.00	$ 900
3.01 - 4.00	$ 1,200
4.01 - 5.00	$ 1,500
5.01 - 10.00	$ 2,250
10.01 - 15.00	$ 3,750
15.01 - 25.00	$ 6,000
25.01 - 100.00	$12,500
> 100.00	$15,000

2. Unless waived or reduced by the secretary, the compensatory mitigation processing fee shall apply even if the secretary grants a full variance to the compensatory mitigation requirement pursuant to §724.K.

E. Compensatory Mitigation Options

1. Compensatory mitigation shall be accomplished through one or more of the following compensatory mitigation options as approved by the secretary:

a. use or acquisition of an appropriate type and quantity of mitigation credits from a mitigation bank approved by the secretary, pursuant to §724.F;

b. use or acquisition of an appropriate type and quantity of advanced mitigation credits from an advanced mitigation project approved by the secretary, pursuant to §724.G;

c. implementation of an individual mitigation measure or measures to offset the unavoidable ecological value losses associated with the permitted activity, pursuant to §724.H;

d. monetary contribution to the affected landowner, affected parish, and/or the Louisiana Wetlands Conservation and Restoration Fund, pursuant to §724.I; and

e. "other" compensatory mitigation options determined to be appropriate by the secretary.

F. Mitigation Banks

1. The secretary shall consider proposals by federal and state agencies, local governing bodies, and private entities to establish wetland mitigation banks.

2. In determining the acceptability and appropriateness of establishing a mitigation bank, the secretary shall consider the following factors:

a. the potential mitigation bank operator's history of compliance with the guidelines and the state program over at least the preceding five years;

b. the mitigation bank operator's potential ability to operate and maintain the mitigation bank throughout the life of the bank (i.e., 20 years for marsh mitigation banks or 50 years for forested wetland mitigation banks);

c. the mitigation bank's potential to create, restore, protect, and/or enhance vegetated wetlands;

d. the mitigation bank's potential effect (positive or negative) on wetland values such as fish and wildlife habitat (particularly rare habitat or habitat for rare fauna), floodwater storage, water quality improvement, storm surge protection, etc.;

e. the mitigation bank's potential effect (positive or negative) on lands and wetland values adjacent to or in the vicinity of the bank; and

f. whether the proposed project is included on, consistent with, or in conflict with any state and/or federal project list, general plan, or other effort designed to create, restore, protect, or enhance vegetated wetlands.

3. In addition to the fees identified at §723.C.3.a.i-ii, nonrefundable fees shall be charged for the initial evaluation, habitat evaluation, establishment, and periodic review of mitigation banks according to the following table.

Proposed Mitigation Bank Acreage	Informal Review	Initial Evaluation Fee	Habitat Evaluation Fee	Establishment Fee	Periodic Review Fee
0 - 100	$0	$ 75	$ 350	$ 75	$ 50
101 - 500	$0	$150	$ 700	$150	$100
501 - 1,000	$0	$225	$1,050	$225	$200
1,001 - 5,000	$0	$300	$1,400	$300	$300
> 5,000	$0	$375	$1,750	$375	$400

4. Proposals for the establishment of mitigation banks utilizing projects which have been permitted but not fully implemented or projects which would not require a permit shall be considered as follows.

a. The secretary shall provide, without charging a fee, potential mitigation bank operators an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.

b. Potential mitigation bank operators shall submit a written request for the secretary to consider designation of a mitigation bank; the following must be provided with the request:

i. coastal use permit and Section 404 (Corps') permit numbers, if applicable;

ii. detailed drawings and project description unless such information is already on file with the department;

iii. a statement describing the extent to which the project has been implemented;

iv. a statement identifying the current and anticipated source(s) of funding, particularly any public funds or funds acquired as mitigation for a previously permitted/authorized activity; and

v. the mitigation bank initial evaluation fee identified at §724.F.3.

c. The secretary shall review the request and within 20 days:

i. inform the potential operator of the request's completeness; and

ii. if the request is not complete or if additional information is needed, the secretary shall advise the potential operator, in writing, of the additional information necessary to evaluate and process the request.

d. Within 30 days of the secretary's acceptance of the request as complete, the secretary shall invite state advisory agencies, the Corps, and federal advisory agencies to participate in a meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s) or received in writing within 20 days of any such meeting(s).

e. Within 90 days of the secretary's acceptance of the request as complete, the secretary shall render a preliminary determination as to whether the project would be acceptable as a mitigation bank and:

i. if the project is preliminarily determined to be acceptable as a mitigation bank, the secretary shall inform the potential operator of such determination; or

ii. if a project is preliminarily determined to be unacceptable as a mitigation bank, the secretary shall advise the potential bank operator, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the project preliminarily acceptable as a mitigation bank.

f. If a permit modification is necessary and is requested by the permittee in accordance with §723.D, the secretary shall process the request for modification in accordance with §723.D.

g. If and when the project is preliminarily determined to be acceptable as a mitigation bank, the secretary shall request the potential bank operator to submit the mitigation bank habitat evaluation fee pursuant to §724.F.3.

h. Within 90 days of receipt of the habitat evaluation fee, the secretary shall determine the quantity, by habitat type, of potential mitigation credits in accordance with §724.F.6.

i. Pursuant to §724.F.7, the secretary shall identify and require a mechanism(s) to ensure appropriate remediation, operation, and maintenance of mitigation bank features.

j. The secretary shall render a final determination as to whether the project would be acceptable as a mitigation bank. If the project is determined to be acceptable as a mitigation bank, the secretary and the mitigation bank operator shall enter into a memorandum of agreement (MOA) which fulfills the requirements of §724.F.8. The MOA shall serve as the formal document which designates a project as a mitigation bank. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the mitigation bank by signing the MOA.

5. Proposals for the establishment of mitigation banks utilizing projects which would require a permit shall be considered as follows.

a. The secretary shall provide, without charging a fee, potential mitigation bank operators an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.

b. Potential mitigation bank operators shall submit a standard permit application in accordance with §723.C. The following must be provided with the permit application:

i. a statement indicating the applicant's interest in establishing a mitigation bank;

ii. a statement identifying the current and anticipated source(s) of funding, particularly any public funds or funds acquired as mitigation for a previously permitted/authorized activity; and

iii. the mitigation bank initial evaluation fee identified at §724.F.3.

c. The secretary shall review and process the permit application in accordance with §723.C, with added consideration that the project is proposed as a mitigation bank.

d. During the public notice period, the secretary shall invite state advisory agencies, the Corps, and federal advisory agencies to participate in a meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s), received in writing during the public notice period, or received in writing within 20 days of any such meeting(s).

e. The secretary shall render a preliminary determination as to whether the proposed activity would be acceptable as a mitigation bank, and:

i. if the proposed activity is preliminarily determined to be acceptable as a mitigation bank, the secretary shall inform the potential operator of such determination; or

ii. if a project is preliminarily determined to be unacceptable as a mitigation bank, the secretary shall advise the potential bank operator, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the proposed activity preliminarily acceptable as a mitigation bank.

f. If and when a proposed activity is preliminarily determined to be acceptable as a mitigation bank, the secretary shall request the potential bank operator to submit the mitigation bank habitat evaluation fee pursuant to §724.F.3.

g. Following receipt of the habitat evaluation fee, the secretary shall determine the quantity, by habitat type, of potential mitigation credits in accordance with §724.F.6.

h. Pursuant to §724.F.7, the secretary shall identify and require a mechanism(s) to ensure appropriate remediation, operation, and maintenance of mitigation bank features.

i. The secretary shall render a final determination as to whether the proposed activity would be acceptable as a mitigation bank. If the proposed activity is determined to be acceptable as a mitigation bank, the secretary and the mitigation bank operator shall enter into a MOA which fulfills the requirements of §724.F.8. The MOA shall serve as the formal document which designates a project as a mitigation bank. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the mitigation bank by signing the MOA.

6. The secretary shall determine the quantity, by habitat type, of mitigation credits potentially available for donation, sale, trade, or use from a proposed mitigation bank as follows.

a. Following receipt of the mitigation bank habitat evaluation fee (§724.F.3), the secretary shall invite state advisory agencies, the Corps, federal advisory agencies, and the potential mitigation bank operator to participate in the determination of potential mitigation credits. The secretary shall consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the potential mitigation bank operator made during, or received in writing within 20 days of, each field investigation or other meeting held to determine the type and quantity of potentially available mitigation credits.

b. The total quantity of potential mitigation credits (AAHUs or CHUs), by habitat type, attributable to the proposed mitigation bank shall be predicted by applying the methodology described in §724.C. The secretary shall consult with the state advisory agencies, the Corps, and federal advisory agencies to ensure that data gathering techniques of sufficient quality and intensity to allow replication of habitat response assessments throughout the mitigation bank life are employed.

c. For projects which have been partially implemented prior to designation as a mitigation bank, total potential mitigation bank credits would be limited to those attributed to features implemented after designation as a bank, except that if agreed to in advance by the secretary total potential credits could include those attributed to features implemented between the time of the mitigation request being accepted by the secretary and bank designation. Credits generated from features implemented as a result of public conservation or restoration funds or as a result of funds serving as mitigation for previous wetland losses shall not be considered part of total potential mitigation credits.

d. Mitigation credits which are donated, sold, traded, or otherwise used for compensatory mitigation shall be referred to as debited credits.

7. Mechanisms for Ensuring Remediation, Operation, and Maintenance of Mitigation Bank Features

a. Three options are available to meet the requirements of §724.F.4.i and §724.F.5.h:

i. for any mitigation bank, mitigation credits could be made available to the mitigation bank operator incrementally over the life of the bank based on periodic reviews of habitat response pursuant to §724.F.10; or

ii. for banks which include features which do not typically require operation or maintenance and involve the types of mitigation measures which have produced consistent and demonstrated success, 100 percent of available credits would be made available to the mitigation bank operator when the bank becomes operational, provided that:

(a). the operator has established a conservation servitude pursuant to §724.F.7.b for the property involved in the mitigation bank; and

(b). the operator establishes a financial mechanism pursuant to §724.F.7.c-e to ensure the availability of funds, for a period of five years, for remediation of the mitigation bank features; or

iii. for banks which include features which typically require remediation, operation, or maintenance (such as water control structures, plugs, channel improvement works, shore or bank protection structures, etc.) or involve the types of mitigation measures which lack consistent and demonstrated success, 25 percent of available credits would be made available, when the bank becomes operational, to the mitigation bank operator for the first two years of operation provided that (1) the operator establishes a conservation servitude pursuant to §724.F.7.b for the property involved in the mitigation bank, (2) the operator establishes a financial mechanism pursuant to §724.F.7.c-e to ensure the availability of funds, for the life of the bank, for remediation (as may be needed for expectable and catastrophic events), operation, and maintenance of the mitigation bank, and (3) the operator provides for the life of the bank, in case the operator fails to remediate, operate, or maintain the mitigation bank in accordance with the MOA, legal authority for the department to perform the warranted remediation, operation, or maintenance; the remaining 75 percent of the credits would be made available in the third year provided that a review of habitat response (§724.F.9) indicates initial success of the mitigation features.

b. The conservation servitude shall be established in accordance with R.S. 9:1271 et seq. and shall:

i. cover all the property located within the mitigation bank;

ii. if appropriate, contain specific language regarding the extent of allowable timber harvesting;

iii. if appropriate, contain specific language regarding the extent of other allowable activities;

iv. prohibit all other activities which may reduce the ecological value of the site;

v. specify the term to be 20 years or more for marsh habitats and 50 years or more for forested habitats;

vi. designate the department as the holder of the servitude;

vii. convey a "third party right of enforcement" to any interested MOA signatory or other party as may be mutually agreed to by the secretary and the mitigation bank operator; and

viii. be recorded in the property records of the parish in which the property is located.

c. The financial mechanism established by the mitigation bank operator could be a letter of credit, surety bond, escrow account, or other mechanism; to be acceptable to the secretary the financial mechanism shall:

i. for mitigation banks described in §724.F.7.a.ii, ensure payment of the designated amount for remediation of the mitigation measures for a period of five years;

ii. for mitigation banks described in §724.F.7.a.iii, ensure payment of the designated amount for remediation, operation, or maintenance of the mitigation measures for a period equal to the life of the mitigation bank; and

iii. ensure that such payments would be made to the Louisiana Wetlands Conservation and Restoration Fund in the event that the mitigation bank operator fails to perform the remediation, operation, or maintenance specified in the MOA.

d. If a letter of credit or escrow account is utilized, the letter or account should be provided by a federally insured depository that is "well capitalized" or "adequately capitalized" and shall not, in any situation, be provided by a depository that is "significantly under capitalized" or "critically under capitalized" as defined in Section 38 of the Federal Deposit Insurance Act.

e. If a surety bond is utilized, the bond shall be written by a surety or insurance company which, at the time of MOA execution, is on the latest U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana-domiciled surety or insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of the policyholder's surplus.

8. The formal MOA to be developed between the secretary and the mitigation bank operator shall, at a minimum:

a. provide a statement of purpose;

b. define the physical boundaries of the mitigation bank;

c. specifically describe the wetland creation, restoration, protection, and enhancement measures to be implemented;

d. specify that the period of operation and maintenance of the mitigation bank is 20 years or more for marsh habitats and 50 years or more for forested habitats;

e. describe the mechanism(s), which meets or which will meet the requirements of §724.F.7;

f. identify the habitat assessment methodology utilized to establish the quantity of mitigation to be credited, including an explanation of any calculations necessary to account for a project life which may, at the option of the mitigation bank operator, be greater than 20 years for marsh projects or greater than 50 years for forested wetland projects;

g. identify, by habitat type, the quantity of total credits;

h. identify the schedule for credits becoming available;

i. identify the schedule for reviewing habitat response over the life of the bank;

j. specifically identify the bank operator responsibilities regarding monitoring and/or providing information necessary for habitat response reviews;

k. for mitigation banks described at §724.F.7.a.iii, specifically define the remedial actions for situations where the bank operator fails to perform the necessary remediation, operation, or maintenance, including securing payments pursuant to §724.F.7 and ensuring legal authority for the department to perform necessary remediation, operation, or maintenance; and

l. for mitigation banks described at §724.F.7.a.iii, specifically define the course of action where habitat response is greater than or is less than predicted.

9. The secretary shall review the habitat response of mitigation banks as follows.

a. The mitigation bank operator shall submit the periodic review fee identified at §724.F.3 to the department within 60 days of being requested to do so by the secretary.

b. Failure to submit such payment shall result in suspension of the mitigation bank until such time that the fee is submitted; if the fee is not submitted within 120 days of the secretary's request, the mitigation bank shall be terminated and the secretary shall require the mitigation bank operator to provide compensatory mitigation to offset the ecological value credits which were debited but not actually produced by the time of termination.

c. State advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator shall be invited to participate in each habitat response review; the secretary shall consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator made during, or received in writing within 20 days of, each field investigation or other meeting related to these reviews.

d. For all banks, a review shall be conducted prior to the end of the second full year of the bank being considered operational, but at least 20 months after commencement of operation; the purpose of this review is to determine if any remediation or adjustments to the prescribed operation or maintenance is necessary.

e. For those banks described at §724.F.7.a.iii, if the review conducted prior to the end of the second full year of operation indicates that the mitigation measures are functioning as projected, the remaining 75 percent of the mitigation credits shall be made available to the mitigation bank operator; if that review indicates that the mitigation measures are not functioning as projected, no additional mitigation credits shall be made available to the mitigation bank operator until such time that a recalculation of projected credits is made and/or it is demonstrated that the mitigation measures are functioning as predicted.

f. In addition to the review conducted prior to the end of the second full year of operation, a review of all marsh mitigation banks shall be conducted within four months prior to the completion of the fifth, tenth, fifteenth, and twentieth years, and a review of all forested wetland mitigation banks shall be conducted prior to the completion of the fifth, tenth, twentieth, thirtieth, fortieth, and fiftieth years. The purposes of these reviews are to determine if remediation is needed, to determine the possible benefit of revising project features and/or their operation or maintenance, to determine if the mitigation bank operator has operated and maintained the mitigation measures as agreed to in the MOA, and to determine if the habitat has responded as predicted.

10. If the secretary and mitigation bank operator agree, pursuant to §724.F.7.a, to ensure appropriate remediation, operation, and maintenance of mitigation bank features via the incremental availability of mitigation credits during the life of the bank, the following procedures shall be followed.

a. Twenty-five percent of the total credits for mitigation banks (marsh and forested wetland banks) shall be made available to the mitigation bank operator upon full implementation of the wetland mitigation measures described in a signed MOA; or if a signed MOA calls for phased implementation of the mitigation measures, an appropriate percentage, not to exceed 25 percent shall be made available to the mitigation bank operator upon implementation of the initial phase(s); these credits shall be referred to as available credits.

b. If at any time, the mitigation bank can not be operated and maintained as described in the MOA due to force majeure, the mitigation bank operator shall have the option of rectifying the wetland creation, restoration, protection, and enhancement measures.

i. If the mitigation bank operator chooses to rectify those measures, the secretary shall recalculate the number of total credits, if it is anticipated that such a recalculation would yield a result substantially different from the current projection of total credits.

(a). The amount of those recalculated total credits which shall be made available for marsh mitigation banks shall be determined according to the following table.

Year of Recalculation	Available Credit
1 – 5	Initially available credit (i.e., 25 percent) minus previously debited credit or 25 percent of recalculated total credit minus previously debited credit whichever is greater.
6 – 10	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
11 – 15	Initially available credit (i.e., 25 percent) minus previously debited credit or 75 percent of recalculated total credit minus previously debited credit whichever is greater.
16 – 20	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

(b). The amount of those recalculated total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table.

Year of Recalculation	Available Credit
1 – 5	Initially available credit (i.e., 25 percent) minus previously debited credit or 25 percent of recalculated total credit minus previously debited credit whichever is greater.
6 – 10	Initially available credit (i.e., 25 percent) minus previously debited credit or 35 percent of recalculated total credit minus previously debited credit whichever is greater.
11 – 20	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
21 – 30	Initially available credit (i.e., 25 percent) minus previously debited credit or 65 percent of recalculated total credit minus previously debited credit whichever is greater.
31 – 40	Initially available credit (i.e., 25 percent) minus previously debited credit or 80 percent of recalculated total credit minus previously debited credit whichever is greater.
41 – 50	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

ii. If the mitigation bank operator chooses not to rectify those measures, the donation, sale, trade, or other use (i.e., debiting) of mitigation credits shall continue only if the initially available credits (i.e., 25 percent) have not yet been debited, and shall cease when those initially available credits are debited. If credits debited already exceed the initially available credits, the secretary shall not require the mitigation bank operator to compensate for credits already debited.

c. If a periodic review reveals that the mitigation bank operator has complied with the MOA, total and available credits shall be adjusted as follows.

i. If the habitat is responding as predicted:

(a). the amount of total credits which shall be made available for marsh mitigation banks shall be determined according to the following table.

Year of Review	Available Credit
5	50 percent of total credit minus previously debited credit.
10	75 percent of total credit minus previously debited credit.
15	100 percent of total credit minus previously debited credit.

(b). the amount of total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table.

Year of Review	Available Credit
5	35 percent of total credit minus previously debited credit.
10	50 percent of total credit minus previously debited credit.
20	65 percent of total credit minus previously debited credit.
30	80 percent of total credit minus previously debited credit.
40	100 percent of total credit minus previously debited credit.

ii. If the habitat is responding better than predicted and the secretary anticipates that the total credits to be generated would likely be greater than the original projection of total credits, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank, and:

(a). the amount of those recalculated total credits which shall be made available for marsh mitigation banks shall be determined according to the following table.

Year of Recalculation	Available Credit
5	50 percent of recalculated total credit minus previously debited credit.
10	75 percent of recalculated total credit minus previously debited credit.
15	100 percent of recalculated total credit minus previously debited credit.

(b). the amount of those recalculated total credits which shall be made available for forested wetland mitigation banks shall be determined according to the following table.

Year of Recalculation	Available Credit
5	35 percent of recalculated total credit minus previously debited credit.
10	50 percent of recalculated total credit minus previously debited credit.
20	65 percent of recalculated total credit minus previously debited credit.
30	80 percent of recalculated total credit minus previously debited credit.
40	100 percent of recalculated total credit minus previously debited credit.

iii. If the habitat is responding favorably but not as well as predicted, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank, and:

(a). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the following table.

Year of Review	Available Credit
5	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
10	Initially available credit (i.e., 25 percent) minus previously debited credit or 75 percent of recalculated total credit minus previously debited credit whichever is greater.
15	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

(b). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the following table.

Year of Review	Available Credit
5	Initially available credit (i.e., 25 percent) minus previously debited credit or 35 percent of recalculated total credit minus previously debited credit whichever is greater.
10	Initially available credit (i.e., 25 percent) minus previously debited credit or 50 percent of recalculated total credit minus previously debited credit whichever is greater.
20	Initially available credit (i.e., 25 percent) minus previously debited credit or 65 percent of recalculated total credit minus previously debited credit whichever is greater.
30	Initially available credit (i.e., 25 percent) minus previously debited credit or 80 percent of recalculated total credit minus previously debited credit whichever is greater.
40	Initially available credit (i.e., 25 percent) minus previously debited credit or 100 percent of recalculated total credit minus previously debited credit whichever is greater.

(c). the secretary shall not require the mitigation bank operator to compensate for credits already debited as long as the mitigation bank continues to operate.

iv. If implementation of the mitigation bank is adversely affecting the bank area (i.e., actually producing less ecological value than would have been produced without implementation of the mitigation bank):

(a). the donation, sale, trade, or other use (i.e., debiting) of mitigation credits shall cease unless and until the mitigation bank operator implements measures, as prescribed by the secretary, to reverse the adverse effect;

(b). if the adverse effect is not reversed, the secretary may not require the mitigation bank operator to compensate for credits already debited;

(c). if the mitigation bank operator attempts to reverse the adverse effect, the debiting of mitigation credits may continue, but shall not go beyond the initially available credits (i.e., 25 percent) until the secretary determines that adverse affect is reversed;

(d). if the adverse effect is reversed, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank; and

(i). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the table presented in §724.F.10.b.i.(a); and

(ii). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the table presented in §724.F.10.b.i.(b);

(e). the secretary shall determine if the adverse effect has been reversed based on field investigations; consultation with the state advisory agencies, the Corps, federal advisory agencies, and the mitigation bank operator; and other methods the secretary deems appropriate.

d. If a periodic review reveals that the mitigation bank operator has failed to comply with the MOA, unless such failure is due to force majeure, the debiting of mitigation credit shall cease and shall not resume unless the compliance failures are rectified within 90 days from a notification by the secretary of apparent failures:

i. if the compliance failures are rectified, the secretary shall recalculate the number of total credits that would be produced over the life of the mitigation bank if it is anticipated that such a recalculation would yield a result substantially different from the current projection:

(a). the amount of those recalculated total credits which would be made available for marsh mitigation banks shall be determined according to the table presented in §724.F.10.c.ii.(a);

(b). the amount of those recalculated total credits which would be made available for forested wetland mitigation banks shall be determined according to the table presented in §724.F.10.c.ii.(b);

ii. if the compliance failures are not rectified, the secretary may require the mitigation bank operator to provide compensatory mitigation to offset the ecological value of the credits which were debited, but not actually produced, and the secretary may require additional measures via permit modification or revocation.

11. Use of Mitigation Banks for Meeting Compensatory Mitigation Requirements

a. The mitigation bank shall not be considered operational until the following conditions have been met:

i. the mitigation bank operator has submitted to the department the mitigation bank establishment fee (§724.F.3);

ii. the MOA described in §724.F.8 has been signed by the bank operator and the secretary;

iii. the mitigation bank operator has provided evidence that one of the options required pursuant to §724.F.7 has been selected and the conditions of such option have been met;

iv. the wetland mitigation measures described in a signed MOA have been fully implemented; or at least the initial phase(s) of the mitigation measures have been implemented if the signed MOA calls for phased implementation.

b. A permit applicant may acquire, subject to approval by the secretary, mitigation credits from the operator of an approved mitigation bank to meet compensatory mitigation requirements; the applicant is required to provide written evidence to the secretary that such acquisition has taken place; the applicant's responsibility for this component of the compensatory mitigation requirement ceases upon receipt of such evidence by the secretary; mitigation credits may be acquired as compensatory mitigation for activities which are not subject to this Chapter, provided that the secretary is advised of any such transactions; acquired credits shall be debited from available credits.

c. Mitigation credits shall be applicable only to anticipated unavoidable net losses of ecological values.

d. The type of, and acceptability of utilizing, mitigation credits shall be determined in accordance with §724.J.

e. The quantity of credits to be debited shall be determined in accordance with §724.C.

f. The secretary shall maintain an account of total, available, and debited credits for each approved mitigation bank.

g. Compensatory mitigation for permitted activities occurring within the boundary of an established mitigation bank, if sufficient credits are available from that mitigation bank, shall be accomplished as follows:

i. the applicant shall acquire, from the mitigation bank operator, the type and quantity of mitigation credits equivalent to the anticipated net loss of ecological value due to the permitted activity; and

ii. the quantity of total credits for that mitigation bank shall be reduced by the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity; i.e., the acres impacted by the permitted activity shall be eliminated from the mitigation bank and from the calculation of total credits.

h. Compensatory mitigation for permitted activities occurring within the boundary of an established mitigation bank, if sufficient credits are not available from that mitigation bank, shall account for the anticipated net loss of ecological value due to the permitted activity and the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity.

12. Any donation, sale, trade, or other transfer of mitigation credits, for purposes other than those provided in §724.F.11, must receive approval of the secretary and shall be allowed only upon a concurrent transfer of the mitigation bank MOA or upon concurrent execution of a separate MOA between the recipient of those credits and the secretary.

G. Advanced Mitigation Projects

1. The secretary shall consider proposals by federal and state agencies, local governing bodies, and private entities to implement advanced mitigation projects.

2. A party which establishes an advanced mitigation project shall be referred to as an advanced mitigation sponsor.

3. In determining the acceptability and appropriateness of establishing an advanced mitigation project, the secretary shall consider the following factors:

a. the potential advanced mitigation sponsor's history of compliance with the guidelines and the state program over at least the preceding five years;

b. the advanced mitigation sponsor's willingness and potential ability to maintain the advanced mitigation project for a period of time determined to be appropriate for the subject project;

c. the advanced mitigation project's potential to create, restore, protect, and/or enhance vegetated wetlands and the project's potential to be "self-maintaining" for the appropriate period of time;

d. the advanced mitigation project's potential effect (positive or negative) on wetland values such as fish and wildlife habitat (particularly rare habitat or habitat for rare fauna), floodwater storage, water quality improvement, storm surge protection, etc.;

e. the advanced mitigation project's potential effect (positive or negative) on lands and wetland values adjacent to or in the vicinity of the advanced mitigation project; and

f. whether the proposed advanced mitigation project is included on, consistent with, or in conflict with any state and/or federal project list, general plan, or other effort designed to create, restore, protect, and/or enhance vegetated wetlands.

4. The area from which credits would accrue for advanced mitigation projects shall not exceed 20 acres. In certain special cases, however, the secretary may allow expansion of the area from which credits would accrue, provided that after a waiting period of at least five years from project implementation a habitat re-evaluation demonstrates that an area beyond 20 acres has been benefited.

5. In addition to the fees identified at §723.C.3.b.i-ii, nonrefundable fees shall be charged for the initial evaluation, establishment, habitat evaluation, and periodic review of advanced mitigation projects according to the following table.

Informal Review	$ 0
Initial Evaluation Fee	$ 50
Establishment Fee	$100
Post-Implementation Evaluation Fee	$250
Periodic Review Fee	$ 50

6. Use of Advanced Mitigation Credits

a. Advanced mitigation credits shall not be available for use until the following conditions have been met:

i. the advanced mitigation sponsor has submitted all necessary fees to the department;

ii. the MOA described in §724.G.7.h has been signed by the advanced mitigation sponsor and the secretary;

iii. the wetland mitigation measures described in the signed MOA have been implemented and in place for one year or more, as determined on an individual case basis;

iv. the secretary has, pursuant to §724.G.9, performed the post-implementation evaluation and determined the type and quantity of advanced mitigation credits which would be attributable to the subject advanced mitigation project.

b. Advanced mitigation credits shall be applicable only to anticipated unavoidable net losses of ecological values.

c. If the advanced mitigation sponsor is a permit applicant, the sponsor may use, subject to approval by the secretary, advanced mitigation credits from its approved advanced mitigation project to meet its compensatory mitigation requirements; other permit applicants may acquire advanced mitigation credits from the sponsor of an approved advanced mitigation project to meet compensatory mitigation requirements, subject to approval by the secretary and subject to following limitations.

i. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a local governmental entity may be used to meet compensatory mitigation requirements only for activities occurring within the geographic limit of the sponsoring entity's jurisdiction.

ii. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a private entity (including but not limited to businesses, industry, landowners, resource conservation groups) may be used to meet compensatory mitigation requirements only for activities undertaken by the advanced mitigation sponsor or for activities undertaken on property owned by the advanced mitigation sponsor.

iii. Advanced mitigation credits resulting from an advanced mitigation project sponsored by a state or federal agency may be used to meet compensatory mitigation requirements only for activities undertaken by the sponsoring agency or on the refuge, management area, etc. where the advanced mitigation project is located.

d. For situations where the permit applicant is not the sponsor of the advanced mitigation site, the applicant is required to provide written evidence to the secretary that the acquisition of credits has taken place; the applicant's responsibility for this component of the compensatory mitigation requirement ceases upon receipt of such evidence by the secretary.

e. The secretary shall maintain an account of total, debited, and remaining advanced mitigation credits for each approved advanced mitigation project.

f. The type of, and acceptability of utilizing, advanced mitigation credits shall be determined in accordance with §724.J.

g. The quantity of credits needed to meet compensatory mitigation requirements shall be determined in accordance with §724.C.

h. Compensatory mitigation for permitted activities occurring within the benefit area of an established advanced mitigation project, if sufficient credits are remaining for that advanced mitigation project, shall be accomplished as follows:

i. the sponsor shall use, or other permit applicants shall acquire, the appropriate type and quantity of advanced mitigation credits needed to offset the anticipated net loss of ecological value due to the permitted activity; and

ii. the quantity of total and remaining credits for that advanced mitigation bank shall be reduced by the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity; i.e., the acres impacted by the permitted activity shall be eliminated from the advanced mitigation project and from the calculation of total and remaining credits.

i. Compensatory mitigation for permitted activities occurring within the benefit area of an established advanced mitigation project, if sufficient credits are not available from that advanced mitigation project, shall account for the anticipated net loss of ecological value due to the permitted activity and the quantity of credits which were originally estimated to be generated from the acreage to be impacted by the permitted activity.

7. Proposals for the establishment of advanced mitigation projects shall be processed as follows.

a. The secretary shall provide, without charging a fee, potential advanced mitigation sponsors an opportunity to present a preliminary proposal and to receive informal input from the department prior to formally initiating the review process described in the remainder of this Subsection.

b. Potential advanced mitigation sponsors shall submit a written request for the secretary to consider designation of an advanced mitigation project; the following must be provided with the request:

i. coastal use permit and Section 404 (Corps') permit numbers, if applicable;

ii. detailed drawings and project description unless such information is on file with the department;

iii. a statement describing the extent to which the project has been implemented;

iv. a statement identifying the current and anticipated source(s) of funding, particularly any public funds or funds acquired as mitigation for a previously permitted/authorized activity; and

v. the advanced mitigation project initial evaluation fee of $50.

c. The secretary shall review the request and within 20 days:

i. inform the potential advanced mitigation sponsor of the request's completeness; and

ii. if the request is not complete or if additional information is needed, the secretary shall advise the potential advanced mitigation sponsor, in writing, of the additional information necessary to evaluate and process the request.

d. Within 30 days of the secretary's acceptance of the request as complete, the secretary shall invite state advisory agencies, the Corps, and federal advisory agencies to participate in an on-site meeting(s) to further evaluate the proposal. The secretary shall consider the comments of the state advisory agencies, the Corps, and federal advisory agencies made during such meeting(s) or received in writing within 20 days of any such meeting(s).

e. Within 60 days of the secretary's acceptance of the request as complete, the secretary shall render a preliminary determination as to whether the project would be acceptable as an advanced mitigation project, and:

i. if the project is preliminarily determined to be acceptable as an advanced mitigation project, the secretary shall inform the potential advanced mitigation sponsor of such determination; or

ii. if the project is preliminarily determined to be unacceptable as an advanced mitigation project, the secretary shall advise the potential advanced mitigation sponsor, in writing, of the reasons for such a determination and, if applicable, the secretary may suggest modifications which could render the project preliminarily acceptable as an advance mitigation project.

f. Once the proposed project is preliminarily determined to be acceptable as an advanced mitigation project, the potential advanced mitigation sponsor shall obtain any necessary permits/authorizations in accordance with applicable state and federal laws.

g. Once all necessary permits/authorizations have been obtained, the potential advanced mitigation sponsor shall submit the advanced mitigation project establishment fee of $100.

h. Within 10 days of receipt of the establishment fee, the secretary shall initiate negotiations among the department, the potential advanced mitigation sponsor, other state agencies, the Corps, and federal advisory agencies to develop a formal MOA. The MOA signed by the secretary and the advanced mitigation sponsor shall serve as the formal document which designates a project as an advanced mitigation project. The Corps, each state advisory agency, and each federal advisory agency may indicate its approval of the advanced mitigation project by signing the MOA. The formal MOA shall, at a minimum:

i. provide a statement of purpose;

ii. define the area of benefit of the advanced mitigation project;

iii. specifically describe the wetland creation, restoration, protection, and enhancement measures to be implemented;

iv. establish the period of time that the advanced mitigation project would be operational;

v. identify the habitat assessment methodology utilized to establish the quantity of advanced mitigation credits, including an explanation of any calculations necessary to account for a project life which may differ from 20 years for marsh projects and which may differ from 50 years for forested wetland projects;

vi. sufficiently identify pre-project conditions to allow comparison at the time of the post-implementation habitat evaluation;

vii. specify the period of time allowed for project implementation, the period of time between completion of implementation and the post-implementation habitat evaluation (one year or more), the period of time allowed for the advanced mitigation sponsor to submit the post-implementation habitat evaluation fee of $250, the period of time allowed for the habitat evaluation to be completed by the secretary, and the point in time when advanced mitigation credits would be made available to the advanced mitigation sponsor;

viii. if deemed necessary for the subject project, identify a schedule for review of habitat response subsequent to the post-implementation habitat evaluation;

ix. if deemed necessary for the subject project, identify the advanced mitigation sponsor's responsibilities for providing post-construction information (e.g., as-built drawings), monitoring information, or other information necessary for any habitat response reviews; and

x. if deemed necessary for the subject project, identify any requirements or mechanisms for performing or assuring maintenance of project features.

8. In accordance with the MOA, the advanced mitigation sponsor shall implement the advanced mitigation project and, at the appropriate time, submit the post-implementation habitat evaluation fee of $250.

9. The secretary shall determine the quantity, by habitat type, of advanced mitigation credits available for donation, sale, trade, or use from an advanced mitigation project within the time frame established in the MOA and in accordance with the following.

a. The secretary shall invite state advisory agencies, the Corps, federal advisory agencies, and the advanced mitigation sponsor to participate in the determination of advanced mitigation credits. The secretary shall consider the comments of the state advisory agencies, the Corps, federal advisory agencies, and the advanced mitigation sponsor made during, or received in writing within 20 days of, each field investigation or other meeting held to determine advanced mitigation credits.

b. The total quantity of advanced mitigation credits (AAHUs or CHUs), by habitat type, attributable to the advanced mitigation project shall be determined by applying the methodology described in §724.C.

c. For projects which have been partially implemented prior to designation as an advanced mitigation project, advanced mitigation credits would be limited to those attributed to only those features implemented after execution of the MOA. Credits generated from features implemented as a result of public conservation or restoration funds or as a result of funds serving as mitigation for previous wetland losses shall not be considered part of the total advanced mitigation credits.

10. The use of advanced mitigation credits shall be in accordance with §724.G.6.

H. Individual Compensatory Mitigation Measures

1. A permit applicant may implement an individual mitigation measure or measures to satisfy the compensatory mitigation requirements of a proposed activity.

2. The secretary shall determine the acceptability of an individual compensatory mitigation measure(s) in accordance with §724.J.

3. The sufficiency of an individual mitigation measure or measures shall be determined in accordance with §724.C, best professional judgment, or a combination of the methodology presented in §724.C and professional judgment. When applying the methodology presented in §724.C, the secretary shall consider the probable life of the proposed mitigation measure and the future ability and willingness of the permit applicant to maintain the proposed mitigation.

I. Monetary Contributions to the Affected Landowner, Affected Parish, and/or the Louisiana Wetlands Conservation and Restoration Fund

1. Compensatory mitigation may be accomplished by monetary contribution to the affected landowner, affected parish, and/or the Louisiana Wetlands Conservation and Restoration Fund.

2. Such monetary contributions shall be used only to offset anticipated unavoidable net losses of ecological values and shall be selected as the compensatory mitigation option only in accordance with §724.J.

3. The secretary shall determine the amount of the monetary contribution by the formula: (anticipated unavoidable net loss of ecological value, measured in AAHUs) H (annual base mitigation cost) H (project years) = compensatory mitigation cost.

4. The determination of anticipated unavoidable net loss of ecological value, in AAHUs, that would result from the proposed activity shall be made in accordance with §724.C.

5. The annual base mitigation cost (ABMC) represents the cost of producing one AAHU for one year, within each habitat type within each hydrologic basin. The ABMC is based on example projects which could feasibly be constructed within each habitat type, within each basin, and was determined by the following formula: [sum for example projects (annual project cost / AAHUs produced)] / number of example projects.

6. ABMCs are provided in the following table.

Hydrologic Basin	Fresh Marsh	Intermediate Marsh	Brackish Marsh	Saline Marsh	Hardwoods	Fresh Swamp
Pontchartrain	380	396	420	443	32	283
Breton	364	389	411	518	32	283
Mississippi River	331	331			32	283
Barataria	373	389	411	443	32	283
Terrebonne	338	353	376	443	32	283
Atchafalaya River	350	350			32	283
Teche/Vermilion	369	387	412	455	32	283
Mermentau	369	387	412	455	32	283
Calcasieu/Sabine	359	387	412	455	32	283

7. The secretary may periodically update the table at §724.I.6 utilizing the best available data, in accordance with provisions of R.S. 49:953.

8. If compensatory mitigation is to be accomplished via monetary contribution, the issued permit shall include a condition which:

a. identifies the monetary amount determined pursuant to §724.I.3-6; and

b. specifies that the money would be transferred, upon request by the secretary, to the affected landowner, affected parish, or the Louisiana Wetlands Conservation and Restoration Fund as selected by the secretary in accordance with §724.I.9.a or §724.I.12-20.

9. To ensure compliance with such a permit condition, the permit shall not be issued:

a. until the monetary contribution has been made to the affected landowner, provided that a plan for use of that money has been accepted by the secretary prior to, or during, the permit processing period, subsequent to coordination among the applicant, affected landowner, the Corps, and state and federal agencies which demonstrated an interest in participating in the selection of appropriate compensatory mitigation; or

b. until the secretary has received a letter of credit on behalf of the permit applicant, pursuant to §724.I.10; or

c. until it has been demonstrated to the secretary that a surety bond has been established by the permit applicant pursuant to §724.I.11.

10. If a letter of credit is utilized, the letter:

a. shall ensure payment of the amount specified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund in the event that the permittee fails to comply with the permit condition required by §724.I.8;

b. should be provided by a federally insured depository that is "well capitalized" or "adequately capitalized" and shall not, in any situation, be provided by a depository that is "significantly under capitalized" or "critically under capitalized" as defined in Section 38 of the Federal Deposit Insurance Act;

c. shall include a clause which causes an automatic renewal of the letter of credit until such time that the secretary returns the letter of credit to the permit recipient and/or depository; and

d. shall require the secretary to return the letter of credit to the permit recipient and/or depository upon compliance with the permit condition.

11. If a surety bond is utilized, the bond:

a. shall ensure payment of the amount specified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund in the event that the permit recipient fails to comply with the permit condition required by §724.I.8;

b. shall be written by a surety or insurance company which, at the time of permit issuance, is on the latest U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana-domiciled surety or insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of the policyholder's surplus;

c. shall have a term of five years; and

d. shall require the secretary to release the bond to the permit recipient upon compliance with the permit condition.

12. Unless a plan for the use of compensatory mitigation funds has been accepted by the secretary pursuant to §724.I.9.a, the secretary shall request proposals for the utilization of compensatory mitigation money from each affected landowner which demonstrated an interest, pursuant to §724.J.5.a.vi or §724.J.6.d.vi, in receiving compensatory mitigation. The secretary's request for proposals shall be made in writing and within 10 days of permit issuance. The request shall include the following:

a. identification of the permitted activity for which payment of compensatory mitigation money is being required;

b. information regarding the habitat type and ecological value (acreage and habitat value) to be strived for;

c. announcement of the sum of money potentially available; and

d. a request that the affected landowner provide to the secretary, in writing and within 25 days of receipt of such a request, a conceptual mitigation plan for use of the compensatory mitigation money.

13. Proposals for expenditure of compensatory mitigation money shall be acted upon as follows.

a. Within 10 days of receipt of a conceptual mitigation proposal, the secretary shall forward the proposal to those state and federal agencies which demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation. Concurrently, the proposal shall also be forwarded to the affected parish if the parish has an approved local program and if the parish demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation.

b. Over the following 60 days, the secretary shall interact with the interested agencies, the affected landowner, and the affected parish (if interested) to finalize the plan for use of the compensatory mitigation money. To be considered acceptable by the secretary, the plan must satisfy the criteria presented in §724.J.2-6. The 60-day period may be extended if requested by the landowner, provided that negotiations are being carried on in "good-faith."

c. If any permits/approvals are needed to implement the acceptable plan, the landowner shall submit the applications/requests to the appropriate entities within 20 days of the plan being deemed "acceptable."

d. If the affected landowner is unable to obtain the necessary approvals for a plan which had been deemed "acceptable" within 60 days of submittal due to concerns of, or lack of consent by, the Corps or state and federal advisory agencies, the secretary shall allow the landowner an additional 30 days to submit an alternate conceptual plan, and the alternate proposal shall be acted upon in accordance §724.I.13.

14. Once a plan is deemed "acceptable" and all necessary approvals have been obtained:

a. within 30 days, the landowner shall provide the secretary with a detailed written estimate of the total cost of implementing the plan;

b. within 10 days of receipt of the estimate, the secretary shall:

i. review the estimate for apparent completeness and accuracy, etc.; and

ii. if the estimate does not appear complete, accurate, and generally in order, identify the deficiencies and request the landowner to revise and submit a complete and accurate estimate; the revised estimate shall be submitted within 15 days of receipt of the secretary's request;

c. within 10 days of receipt of an apparently complete and accurate estimate, the secretary shall request in writing, the permit recipient to provide to the affected landowner a payment of money equal to the estimate, but not to exceed the amount identified in the issued permit;

d. the permit recipient shall make such payment to the affected landowner and provide evidence to the secretary that such payment has been made within 30 days of receipt of that request; the permit recipient's responsibility for this component of the compensatory mitigation requirement ceases upon the receipt of evidence by the secretary;

e. if such payment is made to the landowner:

i. the plan shall be initiated within 45 days of receipt of the payment unless the accepted plan includes seasonal considerations for implementing certain measures, such as grass or tree plantings;

ii. within 15 days of the end of the period allowed for initiation, the landowner shall inform the secretary in writing of the status of plan implementation;

iii. the plan shall be completely implemented within 90 days of initiation unless the accepted plan includes a specific time allotment for completion, or an unexpected circumstance provides a valid reason for delay;

iv. within 30 days of completion of the accepted plan, the landowner shall submit evidence that the accepted plan has been implemented, including a copy of invoices, bills, receipts demonstrating the total monetary expenditure;

v. if the landowner fails to implement the plan in a timely manner, the landowner shall make payment, equal to the amount received from the permit recipient, to the Louisiana Wetlands Conservation and Restoration Fund within 30 days of being requested by the secretary;

vi. if the landowner fails to implement the plan in a timely manner and fails to make payment to the Louisiana Wetlands Conservation and Restoration Fund in a timely manner, the landowner shall be subject to legal remedies to compel the landowner to make such payment, and further, the landowner shall be ineligible to receive compensatory mitigation money in the future; and

vii. if the total expenditure for implementing the plan is less than the amount paid by the permit recipient, the landowner shall:

(a). utilize the difference within 60 days to implement an additional wetland creation, restoration, protection, and/or enhancement measure(s) approved by the secretary; or

(b). pay the difference to the Louisiana Wetlands Conservation and Restoration Fund;

f. if the permit recipient fails to make the requested payment to the landowner within 60 days of the secretary's request, the secretary shall pursue payment via the letter of credit or surety bond, unless the permit recipient provides evidence that the permitted activity has not been implemented and the permit is returned to the secretary;

g. if the secretary pursues payment via the letter of credit or surety bond:

i. the resultant money shall be deposited into the Louisiana Wetlands Conservation and Restoration Fund; and

ii. the permit recipient shall not be allowed, in the future, to accomplish required compensatory mitigation via the monetary contribution option; and

iii. the secretary shall negotiate with the affected landowner(s) on an individual case basis to formulate an acceptable plan for use of that money on the affected landowner's property; or

iv. if an acceptable plan can not be negotiated for the affected landowner's property, the money shall be utilized pursuant to §724.I.21.

15. The secretary may delay the process of formulating a plan for utilizing compensatory mitigation money for the purpose of combining the compensatory mitigation money from more than one permitted activity, provided that:

a. prior to delaying the process, the secretary considers the views of those state and federal agencies which demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation;

b. prior to delaying the process, the secretary considers the views of the affected parish if the parish has an approved local program and if the parish demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation;

c. the time elapsed from issuance of the first permit to implementation of the mitigation measure(s) would not be expected to exceed two years; and

d. the landowner (or parish) is aware, and can demonstrate, that additional impacts are likely to be proposed on the ownership (or within the parish) within 180 days, and the landowner (or parish) has obtained the necessary permits/approvals for a specific mitigation measure that would require an amount of money greater than that generated from a single permitted activity.

16. A landowner's "right" to utilize the required compensatory mitigation money would cease:

a. if the landowner failed to comply with the requests described in §724.J.5.a.vi, §724.J.6.d.vi, or §724.I.12.d; or

b. if the secretary determines, during the interaction period described in §724.I.13.b, that the attempt to derive a plan mutually acceptable to the landowner and the secretary is futile; or

c. if the landowner failed to comply, without good reason, within the time periods described in §724.I.13.c-d and §724.I.14.a, b, and e; or

d. if the necessary permits/approvals described at §724.I.13.c have not been obtained within 180 days of the submittal of applications/requests, due to failure on the part of the landowner to provide, in a timely manner, adequate information or other material necessary for processing the applications/requests; or

e. if, following an attempt to combine compensatory mitigation money from more than one permitted activity, pursuant to §724.I.15, the mitigation measure is not implemented within two years.

17. If a landowner's "right" to utilize the compensatory mitigation money should cease, the secretary shall, in writing and within 10 days of such cessation:

a. inform the landowner that his/her right to utilize the compensatory mitigation money has ceased; and

b. inform the affected parish of the potential availability of that money for implementing wetland creation, restoration, protection, and/or enhancement measures; such notification shall include the items identified in §724.I.12.a-d.

18. Proposals for expenditure of compensatory mitigation money by a parish shall be acted upon in the manner described for a landowner in §724.I.13 and implemented in the manner described for a landowner in §724.I.14-15.

19. A parish's "right" to utilize the compensatory mitigation money would cease if the conditions described in §724.I.16 existed with regard to the parish.

20. If a parish's "right" to utilize the required compensatory mitigation money should cease, the secretary shall within 10 days of such cessation:

a. inform the parish that its right to utilize the compensatory mitigation money has ceased; and

b. request the permit recipient to provide payment of the amount of money identified in the issued permit to the Louisiana Wetlands Conservation and Restoration Fund within 60 days of receipt of that request; the permit recipient's responsibility for this component of the compensatory mitigation requirement ceases upon the receipt of such payment by the secretary.

21. If such payment is made to the Louisiana Wetlands Conservation and Restoration Fund, the secretary shall select a specific wetland creation, restoration, protection, and/or enhancement measure(s) to be implemented with that money, following consideration of the comments of those state and federal agencies which demonstrated an interest in participating in the selection of appropriate compensatory mitigation during permit processing and utilize that money to implement the selected measure.

22. If the permit recipient does not make the requested payment to the Louisiana Wetlands Conservation and Restoration Fund within 60 days of the secretary's request, the secretary shall pursue payment via the letter of credit or surety bond, unless the permit recipient provides evidence that the permitted activity has not been implemented and the permit is returned to the secretary.

23. If the secretary pursues payment via the letter of credit or surety bond:

a. the resultant money shall be deposited into the Louisiana Wetlands Conservation and Restoration Fund and utilized pursuant to §724.I.21; and

b. the permit recipient shall not be allowed, in the future, to accomplish required compensatory mitigation via the monetary contribution option.

J. Selecting Compensatory Mitigation

1. In selecting compensatory mitigation, the secretary shall consider the recommendations and comments of those state and federal agencies which demonstrated an interest, during permit processing, in participating in the selection of appropriate compensatory mitigation. The secretary shall also consider the recommendations and comments of the affected parish if the parish has an approved local program and if the parish demonstrated, during permit processing, an interest in participating in the selection of appropriate compensatory mitigation.

2. The secretary shall ensure that the selected compensatory mitigation, in order of priority, is sufficient (§724.J.3), properly located (§724.J.4), and accomplished by the most desirable available/practicable option (§724.J.5-6).

3. The selected compensatory mitigation proposal must completely offset the unavoidable net loss of ecological value, unless a variance is granted pursuant to §724.K.

4. To be considered properly located, the compensatory mitigation must be selected according to the following prioritized criteria:

a. must have an anticipated positive impact on the ecological value of the Louisiana Coastal Zone;

b. should be on-site if the opportunity exists and if the compensatory mitigation would contribute to the wetland health of the hydrologic basin;

c. should be located, in accordance with R.S. 214.41.E, on the affected landowner's property, provided the secretary determines that the proposed mitigation is acceptable and sufficient;

d. shall be located within the same hydrologic basin as the proposed impact, unless no feasible alternatives for compensatory mitigation exist in that basin; and

e. shall, in order of preference, be located within the same habitat type as the proposed impact; or produce ecological values which would be similar to those lost as a result of the proposed activity, despite being located in a different habitat type; or contribute to the overall wetland health of the hydrologic basin, despite being located in a different habitat type.

5. The procedure for selecting compensatory mitigation for proposed activities which would adversely impact vegetated wetlands on only one landowner's property shall be as follows.

a. By the tenth day of the public notice period; or within 10 days of receipt of a modification request from the applicant, if such modification would result in a substantive change in the anticipated impact (acreage or habitat type); or within five days of determining that the individual use may be authorized under a general permit, the secretary shall:

i. determine the habitat type and extent (i.e., acreage) of anticipated impact to the affected landowner;

ii. in writing, provide to the applicant basic information regarding the anticipated impact (acreage, habitat type);

iii. in writing, request the applicant to submit to the secretary in writing and within 20 days of such request, a compensatory mitigation proposal which has been coordinated with the affected landowner; alternatively, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, the applicant may propose to make a monetary contribution for compensatory mitigation pursuant to §724.I; however, if the applicant proposes to make a monetary contribution, such a proposal must be submitted within 10 days of the secretary's request;

iv. in writing, provide to the affected landowner basic information regarding the anticipated impact (acreage, habitat type);

v. in writing, suggest to the landowner, that he/she assist the applicant in developing a compensatory mitigation proposal; and

vi. in writing, request that the landowner submit to the secretary, in writing and within 30 days of such request, a statement which would:

(a). indicate acceptance of the applicant's compensatory mitigation proposal; or

(b). explain why the applicant's compensatory mitigation proposal is not acceptable and suggest an alternative compensatory mitigation proposal which would be acceptable; or

(c). propose a landowner-authored compensatory mitigation plan if the applicant has failed to contact the landowner or if the applicant has failed to develop a mutually acceptable compensatory mitigation plan; or

(d). request, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, receipt of a monetary contribution for compensatory mitigation, with a specific proposal for the use of that money to be developed pursuant to §724.I; however, if the landowner opts to request receipt of a monetary contribution, such a request must be submitted within 15 days of the secretary's request.

b. An applicant's failure to submit a compensatory mitigation proposal as described in §724.J.5.a.iii may cause an interruption of the permit processing period identified at §723.C.4.f, until such time that an acceptable and sufficient mitigation plan can be developed.

c. A landowner's failure to submit the statement described in §724.J.5.a.vi would forfeit the landowner's "right" to require that the compensatory mitigation for the subject activity be performed on the subject property, but not necessarily preclude compensatory mitigation from occurring on the subject property.

d. All compensatory mitigation proposals submitted by the landowner or applicant; negotiated among the landowner, applicant, and the secretary; suggested by state advisory agencies, the Corps, or federal advisory agencies; or developed by the secretary shall be considered.

e. Subject to §724.J.1-4, the secretary shall select the compensatory mitigation option according to the following priorities, unless there is a valid reason for altering the order of priority:

i. acquisition of mitigation credits, if the affected landowner has an approved mitigation bank;

ii. use of advanced mitigation credits if the affected landowner has an approved advanced mitigation project, if allowable pursuant to §724.G.6;

iii. if the proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5.0 acres or less, monetary contribution pursuant to §724.I. Valid reasons for altering the order of priority, and the altered priority, include but are not limited to the following:

(a). if the Corps has identified an individual compensatory mitigation proposal which would be acceptable and sufficient to the affected landowner (if interested in receiving compensatory mitigation), the applicant, and the secretary, such proposal shall be given higher priority than the monetary contribution; or

(b). if the affected landowner forfeited his/her right to "require" compensatory mitigation pursuant to §724.J.5.c, and the affected parish does not have a use for the monetary contribution which has been preapproved by the secretary and the Corps, and there is an available and appropriate mitigation bank or advanced mitigation site not on the affected landowner's property, the acquisition of mitigation bank credits or advanced mitigation credits shall be given higher priority than the monetary contribution;

iv. individual compensatory mitigation proposal on the affected landowner's property;

v. acquisition of credits from a mitigation bank not on the affected landowner's property;

vi. use of advance mitigation credits from an advanced mitigation project not on the affected landowner's property, if allowable pursuant to §724.G.6;

vii. individual mitigation proposal not on the affected landowner's property;

viii. if the proposed activity would directly impact more than 5.0 acres but no more than 10.0 acres, monetary contribution pursuant to §724.I.

f. Monetary contributions shall not be an accepted form of compensatory mitigation if the proposed activity would directly impact more than 10 acres.

6. For Proposed Activities Which Would Impact Vegetated Wetlands on More than One Landowner's Property

a. By the tenth day of the public notice period; or within 10 days of receipt of a modification request from the applicant, if such modification would result in a substantive change in the anticipated impact (acreage or habitat type); or within five days of determining that the individual use may be authorized under a general permit, the secretary shall request the applicant to provide a map(s) to the secretary with accurate scale and sufficient detail to determine the extent of impact (i.e., acreage) to each landowner identified pursuant to R.S. 49:214.30.C.2.

b. At this time, the permit processing period identified at §723.C.4.f shall be interrupted until the requested map(s) has been provided.

c. When the anticipated impact to a given landowner would be less than 1 acre, it shall be considered unacceptable to allow that landowner to require compensatory mitigation to be performed on his/her property, unless it is determined to be acceptable by the secretary in certain special cases.

d. Within 10 days of receipt of the map(s) described in §724.J.6.a, the secretary shall:

i. determine the habitat type and extent (i.e., acreage) of anticipated impact to each affected landowner;

ii. in writing, provide to the applicant a list of affected landowners whose anticipated direct impact is 1.0 acre or greater and basic information regarding the anticipated impact (acreage, habitat type) to each of those landowners and for the entire project;

iii. in writing, request the applicant to submit to the secretary in writing and within 20 days of such request, a compensatory mitigation proposal which has been coordinated among all affected landowners whose anticipated direct impact is 1 acre or greater; alternatively, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact 5 acres or less, the applicant may propose to make a monetary contribution for compensatory mitigation pursuant to §724.I; however, if the applicant proposes to make a monetary contribution, such a proposal must be submitted within 10 days of the secretary's request;

iv. in writing, provide to each landowner whose anticipated direct impact is 1 acre or greater, basic information regarding the anticipated impact (acreage, habitat type) to the subject property and for the entire project;

v. in writing, suggest to each of those landowners, that they assist the applicant in developing a compensatory mitigation proposal; and

vi. in writing, request that each of those landowners submit to the secretary, in writing and within 30 days of such request, a statement which would:

(a). indicate acceptance of the applicant's compensatory mitigation proposal; or

(b). explain why the applicant's compensatory mitigation proposal is not acceptable and suggest an alternative compensatory mitigation proposal which would be acceptable; or

(c). propose a landowner-authored compensatory mitigation plan if the applicant has failed to contact the landowner or if the applicant has failed to develop a mutually acceptable compensatory mitigation plan; or

(d). request, if the applicant's proposed use would qualify for authorization under a general permit or if the proposed use would directly impact a total of 5 acres or less, receipt of a monetary contribution for compensatory mitigation, with a specific proposal for the use of that money to be developed pursuant to §724.I; however, if the landowner opts to request receipt of a monetary contribution, such a request must be submitted within 15 days of the secretary's request.

e. An applicant's failure to submit a compensatory mitigation plan as described in §724.J.6.d.iii may cause an interruption of the permit processing period identified at §723.C.4.f, until such time that an acceptable and sufficient mitigation plan can be developed.

f. A landowner's failure to submit the statement described in §724.J.6.d.vi would forfeit the landowner's "right" to require that the compensatory mitigation for the subject activity be performed on the subject property, but not necessarily preclude compensatory mitigation from occurring on the subject property.

g. All compensatory mitigation proposals submitted by the landowner(s) or applicant; negotiated among the landowner(s), applicant, and the secretary; suggested by state advisory agencies, the Corps, or federal advisory agencies; or developed by the secretary shall be considered.

h. In situations where landowners have proposed separate/multiple compensatory mitigation measures, the secretary shall consider the following factors in selecting compensatory mitigation:

i. cost effectiveness of offsetting ecological value losses via separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s);

ii. practicability, on the part of the secretary, of confirming/enforcing implementation, operation, and maintenance of separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s); and

iii. the long-term ecological benefits of separate/multiple compensatory mitigation measures versus fewer or a single comprehensive compensatory mitigation measure(s).

i. The secretary shall select the compensatory mitigation option according to the following priorities, unless there is a valid reason for altering the order of priority:

i. if an affected landowner has an approved mitigation bank, acquisition of mitigation credits, at least for that portion of the impact which occurs on that landowner's property;

ii. if an affected landowner has an approved advanced mitigation project, use of advanced mitigation credits, for that portion of the impact which occurs on that landowner's property, if allowable pursuant to §724.G.6;

iii. if the proposed activity would qualify for authorization under a general permit or if the proposed use would directly impact 5 acres or less, monetary contribution pursuant to §724.I. Valid reasons for altering the order of priority, and the altered priority, include but are not limited to the following:

(a). if the Corps has identified an individual compensatory mitigation proposal which would be acceptable and sufficient to the affected landowners (if interested in receiving compensatory mitigation), the applicant, and the secretary, such proposal shall be given higher priority than the monetary contribution; or

(b). if the affected landowners forfeited their right to "require" compensatory mitigation pursuant to §724.J.5.c, and the affected parish does not have a use for the monetary contribution which has been preapproved by the secretary and the Corps, and there is an available and appropriate mitigation bank or advanced mitigation site not on an affected landowner's property, the acquisition of mitigation bank credits or advanced mitigation credits shall be given higher priority than the monetary contribution;

iv. individual compensatory mitigation measure(s) acceptable to all interested landowners;

v. individual compensatory mitigation measure(s), that would have a positive effect on one or more, but not necessarily all, of the interested landowner's properties;

vi. acquisition of credits from a mitigation bank not on an affected landowner's property;

vii. use of advanced mitigation credits from an approved advanced mitigation project not on an affected landowner's property, if allowable pursuant to §724.G.6;

viii. individual mitigation proposal not on an affected landowner's property;

ix. if the proposed activity would directly impact more than 5 acres but no more than 10 acres, monetary contribution pursuant to §724.I.

j. Monetary contributions shall not be an accepted form of compensatory mitigation if the proposed activity would directly impact more than 10 acres.

K. Variances from Compensatory Mitigation Requirements

1. Pursuant to the remainder of this Section, the secretary shall grant a full or partial variance from the compensatory mitigation requirement (variance) when a permit applicant has satisfactorily demonstrated to the secretary:

a. that the required compensatory mitigation would render impracticable an activity proposed to be permitted; and

b. that such activity has a clearly overriding public interest.

2. Variance Request Requirements

a. Following the application of §724.B; development of a compensatory mitigation option(s) pursuant to §724.J; and presentation by the secretary (in accordance with §723.C.8.b) of a draft permit, including conditions for compensatory mitigation, the permit applicant may file a variance request with the secretary.

b. The variance request must be filed and resolved prior to initiation of the proposed activity.

c. The variance request must be filed in writing and include the following:

i. a statement explaining why the proposed compensatory mitigation requirement would render the proposed activity impracticable, including supporting information and data; and

ii. a statement demonstrating that the proposed activity has a clearly overriding public interest by explaining why the public interest benefits of the proposed activity clearly outweigh the public interest benefits of compensating for wetland values lost as a result of the activity, including supporting information and data.

d. As part of the requirements of §724.K.2.c, requests for variances for mineral exploration, extraction, and production activities shall include production projections, including supporting geologic and seismographic information; a projected number of new jobs; and the expected duration of such employment opportunities. The secretary shall ensure that any proprietary information is adequately protected.

e. As part of the requirements of §724.K.2.c, requests for variances for mineral transportation activities shall include information regarding the amount of product proposed to be transported; the destination of the product; a projected number of new jobs and their location; and the expected duration of such employment opportunities. The secretary shall ensure that any proprietary information is adequately protected.

f. As part of the requirements of §724.K.2.c, requests for variances for flood protection facilities shall include the following information:

i. a detailed description of the existing infrastructure which would be protected by the flood protection facility, including public facilities (e.g., roads, bridges, hospitals, etc.), residential areas (including approximate number of homes and associated residents), industries, and businesses;

ii. detailed drawings or photographic documentation depicting the locations of the above infrastructure components;

iii. a detailed description of the extent and severity of past flooding problems and projections of potential damages due to future flooding events; and

iv. a description of nonstructural and structural flood protection and reduction measures which have been undertaken or implemented in the past, or are reasonably expected to occur in the future.

g. As part of the requirements of §724.K.2.c, all requests for variances shall include cost estimates for implementing the proposed project and performing compensatory mitigation.

h. The request shall be accompanied with a nonrefundable filing and hearing fee of $250.

3. Review and Notification by the Secretary

a. The secretary shall review a variance request and inform the applicant of its completeness within 15 days of receipt.

b. If the variance request is not complete or if additional information is needed, the secretary shall request from the applicant, the additional information necessary to evaluate and process the request. If the applicant fails to respond to such request within 30 days, the secretary may advise the applicant that his request will be considered withdrawn unless the applicant responds within 15 days of such advisement. If the request is considered withdrawn, to reinstate the request, the applicant will be required to resubmit the request, accompanied with an additional nonrefundable filing and hearing fee of $250.

c. The secretary shall not issue a variance prior to publishing a "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement", and accepting and considering public comments.

d. Within 30 days of the secretary's acceptance of the variance request as complete, the secretary shall review the request, considering the criteria set forth in §724.K.1, and either:

i. notify the applicant of the secretary's intention to deny the request, including his rationale; or

ii. determine that the variance request warrants further consideration and publish a "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement."

e. "Notices of Intent to Consider a Variance from the Compensatory Mitigation Requirement" shall be published in the official state journal, mailed to Joint Public Notice mailing recipients and all persons that submitted comments on the original public notice, and provided to the local governing authority of the parish or parishes where the proposed activity would take place.

f. "Notices of Intent to Consider a Variance from the Compensatory Mitigation Requirement" shall contain the following:

i. name and address of the applicant;

ii. the location and description of the proposed activity;

iii. a description of the area to be directly impacted (acres and habitat types) and quantification of anticipated unavoidable net losses of ecological value;

iv. a description of the compensatory mitigation plan proposed as a condition of permit issuance;

v. a description of the nature and extent of the variance;

vi. a summary of the information presented by the applicant in fulfillment of §724.K.2.c-g;

vii. an unsigned secretarial "Statement of Finding" regarding why the proposed compensatory mitigation requirement may render the proposed activity impracticable and comparing the public interest benefits of the proposed activity to the public interest benefits of requiring compensatory mitigation for the wetland values lost as a result of the activity; and

viii. notification that public comments, including requests for public hearings, will be accepted for 25 days from the date of publication of the "Notice of Intent to Consider a Variance from the Compensatory Mitigation Requirement."

4. Public Hearings on Variance Requests

a. A public hearing shall be held when:

i. requested by the applicant following the secretary announcing his intention to deny a variance request;

ii. the secretary determines that a public hearing is warranted, following a review of comments received during the period described in §724.K.3.f.viii; or

iii. the conditions described at §723.C.6.c are met.

b. Public hearings shall be conducted in accordance with §727.

5. Final Variance Decision

a. The secretary shall issue a final variance decision based on full consideration of the criteria set forth in §724.J.1, information submitted by the applicant, comments received during the public comment period, and comments received at the public hearing if one is held. A "Statement of Finding" described in §724.K.5.b shall be prepared:

i. within 15 days of the closing of the public comment period if the secretary determines that a public hearing is not warranted; or

ii. within 15 days of the public hearing if one is held.

b. The secretary shall prepare a signed final "Statement of Finding" which explains the reasons for denying a variance or describes why the proposed compensatory mitigation requirement would have rendered the proposed activity impracticable, describes why the public interest benefits of the proposed activity clearly outweigh the public interest benefits of requiring compensation for wetland values lost as a result of the activity; and describes the nature and extent of the granted variance. This statement shall be part of the permit record, available to the public, and attached to the granted permit.

c. The final variance decision is subject to reconsideration as described at R.S. 49:214.35.

6. Duration of Variance

a. A variance shall be valid only for the original permit recipient. Any party receiving a transferred permit may seek a variance, through the procedures established by §724.K.2-5.

b. A variance shall be valid for the initial terms of the permit to which it is specifically related, unless the variance is modified, or revoked in accordance with §724.K.7.

c. The secretary may extend a variance, in accordance with §723.D.5., concurrently with the extension of the permit to which it is specifically related.

7. Modification or Revocation of Variance

a. If requested by the applicant, the secretary shall consider modifying a variance, according to the procedures described in §724.K.2-5.

b. A third party may request the secretary to consider a modification or revocation of a variance, based on lack of conformance to the criteria set forth in §724.K.1.

c. The secretary may revoke a variance, if:

i. there are inaccuracies in the information furnished by the applicant during the permit or variance review period; or

ii. there is any violation of the conditions and limitations of the permit to which the variance is specifically related; or

iii. there is any violation of the conditions and limitations of the variance; or

iv. the applicant misrepresented, without regard to intent, any material facts during the variance or permit review period; or

v. the actual public interests of the activity turn out to be significantly less than that estimated by the applicant in its statements filed in association with the variance request review.

d. The procedure for revoking a variance shall be as follows.

i. The secretary shall, in writing, inform the variance holder that revocation is being considered, providing reasons for the potential revocation and advising the variance holder that he will be given, if requested within 10 days from receipt of the notice, an opportunity to respond to the reasons for potential revocation.

ii. After consideration of the variance holder's response, or if no response is received, the secretary shall provide written notice to the variance holder, allowing the variance to remain valid or explaining newly imposed compensatory mitigation requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995).

Subchapter D. Local Coastal Management Programs

§725. Development, Approval, Modification, and Periodic Review of Local Coastal Management Programs

A. Letter of Intent. Parishes intending to apply for grants to prepare a local coastal management program (LCMP) shall notify the secretary of DNR by sending a letter of intent approved by the parish Police Jury or Council.

B. Program Development

1. The process for developing a local program will consist of:

a. a division of the parish's coastal zone into units that have similar environmental and natural resource characteristics (environmental management units) and an identification and mapping of the features, resources, and resource users of those units;

b. an analysis of the projected social and economic growth for the parish. This analysis must include projected population growth, projected expansion of economic sectors, estimated demand for and use of land, and an assessment of how these projected changes will affect the natural resources of each management unit as well as the parish as a whole;

c. an identification of existing and potential resource-use conflicts including their location and severity. Identified problems should be mapped to the extent possible;

d. an identification of particular areas, if any, within the parish requiring special management as a result of their unique natural resource or development potentials;

e. the development of goals, objectives and policies for the management of the parish's coastal zone. This shall include those goals and objectives applicable to the entire parish coastal zone and specific objectives and priorities of use for each management unit and identified particular area, if any. Except as specified in Subparagraph D.1.d below, these policies, objectives and priorities of uses must be consistent with the policies and objectives of the SLCRMA, as amended, and the state guidelines;

f. the development of procedures providing for the full participation of federal, state, local and municipal government bodies and the general public in the development and implementation of the parish program;

g. the development of the necessary authorities, procedures, and administrative arrangements for reviewing, issuing, and monitoring permits for uses of local concern;

h. the development of special procedures and methods for considering uses within special areas designated pursuant to §214.29 of the SLCRMA, if any, and the impacts of uses on the special areas;

i. the development of special procedures and methods for considering uses of greater than local benefit and uses affecting state or national interests.

C. Program Content

1. Local programs may be submitted for approval after being developed in accordance with Subsection B and shall consist of:

a. a summary of the local program;

b. maps and descriptions of the natural features, resources, and existing land use in each management unit. These maps shall depict the division of the coastal areas into coastal waters and wetlands, transitional areas, fastlands, and lands more than 5 feet above mean sea level;

c. the results of the social and economic analysis carried out pursuant to Subparagraph B.1.b, above;

d. a description of those existing and future resource-use conflicts identified pursuant to Subparagraph B.1.c, above;

e. an identification of those particular areas, if any, requiring special management as described in Subparagraph B.1.d above, as well as the special policies and/or procedures to be applied to these areas;

i. statement of the goals, objectives, policies, and priorities of uses included in the program, as described in Subparagraph B.1.e.;

ii. a statement assuring that the policies of the local program are consistent with the policies and objectives of the SLCRMA, as amended, and the state guidelines and that the local program shall be interpreted and administered consistently with such policies, objectives, and guidelines;

f. a description of the authorities and administration arrangements regulating uses of local concern, for reviewing, issuing, and monitoring local coastal use permits, and for enforcing the local program, including:

i. a concise explanation of how the local program's coastal management process is to work;

ii. a description and listing of those areas and uses that will require local coastal use permits;

iii. an illustrative list of particular activities which occur either in fastlands or on lands more than 5 feet above mean sea level that have, or may have, direct and significant impacts on coastal waters;

iv. an analysis of all ordinances included in the local program demonstrating that the effect of such ordinances, when applied to uses not subject to the local coastal use permit program, would result in compliance with the goals and provisions of the SLCRMA, as amended, the objectives of the Louisiana Coastal Resources Program (LCRP), and the policies of the coastal use guidelines;

v. a description of the administrative means by which the parish will coordinate with other governmental bodies during program implementation regarding:

(a). local program implementation, including copies of any interagency or intergovernmental agreements;

(b). multiparish environmental considerations;

(c). consideration by the parish of regional, state, or national interests; and

(d). regional, state, or national plans affecting the parish coastal zone and other projects affecting more than one parish;

vi. certified copies of all ordinances, plans, programs, and regulations proposed to be included in the program;

vii. a resolution from the governing body of the parish expressing approval of the local program as submitted and its intent to implement the submitted program subsequent to state approval;

g. documentation that the parish has provided a full opportunity for governmental and public involvement and coordination in the development of the local program. It must be shown that:

i. at least one public hearing was held in the coastal zone on the total scope of the proposed program;

ii. public notice of the availability of the draft proposed program was given at least 30 days prior to the hearing. Copies of the program must have been available for distribution to relevant state, federal and local governmental agencies, and the general public and were available for public inspection at reasonable hours at all libraries within the parish, the offices of the police jury, and the city or town hall of all the municipalities in the coastal zone;

iii. full consideration was given to comments received during program development and the public hearings.

D. Program Approval

1. Local programs may be submitted for approval after promulgation of these rules and the state guidelines. The following procedures shall apply.

a. Fifteen copies of the complete proposed local program shall be submitted to the secretary. The local government shall have additional copies available for distribution upon request. The secretary shall, within 15 days of the filing of a complete program give public notice of the submittal of the proposed local program, of the availability of copies of the program for public review and of the date,

time and place of a public hearing on the program and request public comment. The secretary shall give full consideration to all comments received.

b. The secretary shall, within 90 days of the giving of public notice, either approve the local program or notify the local government of the specific changes which must be made in order for it to be approved.

c. In order to approve the local program, the secretary must find that:

i. the program is consistent with the state guidelines and with the policies and objectives of the SLCRMA;

ii. the program submitted for approval contains all the elements required by Subsection C above and that the materials submitted are accurate and are of sufficient specificity to provide a basis for predictable implementation of the program;

iii. that the proposed program, and the policies, objectives, and priorities of use in the program, are of a sufficient comprehensiveness and specificity to address the identified resource-use conflicts and are consistent with the goals of the SLCRMA, the objectives of the LCRP, and the policies of the coastal use guidelines;

iv. full opportunity has been provided for federal, state, local and municipal governmental bodies and the general public to participate in the development of the program pursuant to Subparagraph C.1.g above;

v. the local government has included within the program all applicable ordinances and regulatory or management programs which affect the coastal zone; that these authorities are of sufficient scope and specificity to regulate uses of local concern; that the regulatory program meets all requirements for procedures and time frames established by the SLCRMA and regulations of the department; that sufficient authority is provided to enforce the local program, including provisions for those penalties provided by §214.36 of the SLCRMA, and that the program has met all substantive requirements of the SLCRMA and the regulations adopted pursuant thereto;

d. in reviewing a local program for consistency with the state guidelines the secretary, acting jointly with the secretaries of the Department of Natural Resources and the Department of Wildlife and Fisheries, may make reasonable interpretations of the state guidelines, insofar as they affect that particular program, which are necessary because of local environmental condition or user practices. Local programs that may be inconsistent in part with the state guidelines may be approved notwithstanding the conflicts if the secretaries find that:

i. the local environmental conditions and/or user practices are justified in light of the goals of Act 361, (SLCRMA) the objectives of the LCRP, and the policies of the state guidelines;

ii. approval would result in only minimal and inconsequential variance from the objectives and policies of the Act and the guidelines; and

iii. the local program provides special methods to assure that the conflicts remain minimal and inconsequential;

e. the local program shall become effective when approved by the secretary and officially adopted by the local government.

E. Modifications

1. Any significant proposed alteration or modification to an approved local program shall be submitted to the secretary for review and approval along with the following:

a. a detailed description of the proposed change;

b. if appropriate, maps of sufficient scale and detail depicting geographically how the program would be changed;

c. an explanation of how the proposed change would better accommodate local conditions and better serve to achieve the objectives of the state program and the local program;

d. a resolution from the local government expressing approval of the modification as submitted and its intent to implement the change subsequent to state approval;

e. all parish ordinances relevant to the proposed modification;

f. any comments from governmental units that may be affected by the proposed modification;

g. the record of the public hearing on the proposed modification, including any written testimony or comments received; and

h. documentation that the parish has provided a full opportunity for governmental and public involvement in the development of the proposed modification.

2. Significant alterations or modifications shall be reviewed and approved pursuant to Subsection B, C, and D above. They must be consistent with the guidelines and the state program and meet all pertinent substantive and procedural requirements.

3. An alteration or modification shall become effective when approved by the secretary and officially adopted by the local government. If a proposed alteration or modification is not approved, the provisions of the previously approved program shall remain in effect unless specifically rejected by the governing body of the parish.

F. Periodic Review of Programs

1. Local governments shall submit an annual report on the activities of an approved local program. This annual report shall include:

a. the number, type, and characteristics of applications for coastal use and other permits;

b. the number, type, and characteristics of coastal use and other permits granted, conditioned, denied, and withdrawn;

c. the number, type, and characteristics of permits appealed to the courts;

d. results of any appeals;

e. a record of all variances granted;

f. a record of any enforcement actions taken;

g. a description of any problem areas within the state or local program and proposed solutions to any such problems;

h. proposed changes in the state or local program.

2. The administrator shall from time to time, and at least every two years, review the approved local programs to determine the extent to which the implementation of the local program is consistent with and achieving the objectives of the state and local programs.

3. Should the secretary determine that any part of the local program is not consistent with the state program or is not achieving its stated objectives or is not effective, he shall notify the local government and recommend changes and modifications which will assure consistency with, and achievement of, the objectives of the overall coastal program or improve the efficiency and effectiveness of the local program.

4. If the local government fails to give official assurance within one month after receipt of the secretary's notice that it intends to modify the local program in a timely manner to conform to these recommendations, or thereafter fails to make the necessary changes within three months, the secretary may, after public notice, revoke approval of the local program. In such an event the local government shall no longer have the authority to permit uses of local concern or otherwise carry out the functions of an approved program and will lose eligibility to receive management funds other than those funds appropriate and necessary to make the necessary changes. If and when the secretary determines that the local program has been appropriately modified to meet his recommendations pursuant to Subsection B above, he may, after public notice, reinstate approval.

G. Funding of Local Programs

1. All funds provided to local governments by the department for program development or implementation shall be subject to the following.

a. Any state or federal funds provided to local governments for development or implementation of approved local program shall be by contract with the department. Any such financial assistance shall be subject to these rules and any applicable federal requirements.

b. Such financial assistance shall be on a matching fund basis. The required local match shall be determined by the secretary.

c. Eligibility of a local government for such financial assistance shall be determined by the administrator pursuant to these rules and the contractual requirements of the department.

d. Local programs shall receive an equitable share of the total federal money received by the department from the Office of Coastal Zone Management for Section 306 [of the federal Coastal Zone Management Act, as amended] implementation.

2. Planning and development assistance funding shall be subject to the following.

a. Funding for planning and development of local programs shall be available. The level of such funding shall be at the discretion of the administrator and as provided for herein. A base level of funding will be made available to each parish in the coastal zone which does not have an approved program. Any unutilized allocated funds will be available for use by other parishes at the discretion of the administrator for special planning and development projects.

b. To be eligible to continue receiving planning and development assistance, the local government must be making substantial progress toward finalization of an approvable local program.

c. Planning and development funds may only be used to plan for and develop those elements of a local program required by Subsections B and C of these rules and the SLCRMA.

d. Planning and development assistance will be provided by the department for two years from the date of federal approval of the state program or until a parish receives an approved local program, whichever is sooner.

3. The department will make funds available to local governments for costs incurred in applying for approval from the department, including printing and advertising, holding required public hearings and making copies of the local program available to governmental bodies and the general public.

4. Implementation assistance funding shall be subject to the following.

a. Funding for implementation of a local program shall be available after approval of the local program by the department. A local program shall be eligible for such assistance only so long as it continues to be an approved program.

b. The administrator shall establish and modify, as appropriate, a reasonable allocation formula utilizing objective criteria regarding the coastal zone of the parish, including:

i. population;

ii. total surface area;

iii. wetland area;

iv. number of permits; and

v. length of interface between urban and agricultural areas and wetland areas.

c. Each parish with an approved program shall be assured of a base level of funding, with additional funding based upon the allocation formula. Any unutilized

implementation funds will be available, at the discretion of the administrator, for use by other parishes for special planning, implementation or management projects.

d. Implementation funds may only be used to implement the approved local program, carry out planning for or development of approvable alterations or modifications in the local program, and to update or revise the data base utilized by the local program.

H. Written Findings. All findings and determinations required by these rules shall be in writing and made part of the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

Subchapter E. Hearings

§727. Public Hearings

A. Scope. This regulation is applicable to all public hearings pursuant to the SLCRMA. All such public hearings shall be nonadjudicatory public proceedings conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed action which affords to the public the opportunity to present their views and opinions on such action.

B. Public Notice

1. Public notice shall be given at least 30 days in advance of any public hearings. Notice shall be sent to all persons requesting notices of public hearings and shall be posted in all governmental bodies having an interest in the subject matter of the hearing. Such notice may be limited in area consistent with the nature of the hearing.

2. The notice shall contain the time, place, and nature of hearing; and the location of materials available for public inspection.

C. Time and Place. In fixing the time and place for a hearing, due regard shall be had for the convenience and necessity of the interested public.

D. Presiding Officer

1. The governmental body holding the hearing shall designate a staff member to serve as presiding officer. In cases of unusual interest the administrator shall have the power to appoint such person as he deems appropriate to serve as the presiding officer.

2. The presiding officer shall establish a hearing file consisting of such material as may be relevant or pertinent to the subject matter of the hearing. The hearing file shall be available for public inspection.

E. Representation. At the public hearing, any person may appear on his own behalf, or may be represented by counsel or by other representatives.

F. Conduct of Hearings

1. Hearings shall be conducted by the presiding officer in an orderly but expeditious manner. Any person shall be permitted to submit oral or written statements concerning the subject matter of the appropriate decision. Written statements may be presented any time prior to the time the hearing file is closed. The presiding officer may afford participants an opportunity for rebuttal.

2. The presiding officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, for arguments of parties or their counsel or representatives, and upon the number of rebuttals.

3. Cross-examinations of witnesses shall not be permitted.

4. All public hearings shall be recorded verbatim. Copies of the transcript will be available for public inspection and purchase at the office of the administrator.

5. All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, subject to exclusion for reasons of redundancy, be received in evidence and shall constitute a part of the hearing file.

6. The hearing file shall remain open for a period of 10 days after the close of the public hearing for submission of written comments or other materials. This time period may be extended for good cause.

7. In appropriate cases, joint public hearings may be held with other state, federal, or local agencies, provided the procedures of those hearings are generally consistent with the requirements of this regulation.

8. The procedures in Paragraphs 4 and 6 of this Subsection may be waived by the presiding officer in appropriate cases.

G. Filing of Transcript of the Public Hearing. The testimony and all evidence received at the public hearing shall be made part of the administrative record of the action. All matters discussed at the public hearing shall be fully considered in arriving at the decision or recommendation. Where a person other than the primary decision making official serves as presiding officer, such person shall submit a report summarizing the testimony and evidence received at the hearing to the primary decision making official for consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

Subchapter F. Special Areas

§729. Special Areas

A. General. This Section shall establish procedures for the designation, utilization and management of special areas and for establishing guidelines and priorities of uses for each area.

B. Nominations

1. An area may be nominated for designation as a special area by any person, local government, state agency, or the secretary.

2. Areas may be nominated for any of the purposes set forth in §214.27 of the Act, or for similar purposes, provided that such areas:

a. are in the coastal zone;

b. have unique and valuable characteristics;

c. require special management procedures different from the normal coastal management process; and

d. are to be managed for a purpose of regional, state, or national importance.

3. Nominations shall consist of:

a. a statement regarding the area nominated, including, for example, its unique and valuable characteristics, its existing uses, the environmental setting, its history, and the surrounding area;

b. a statement of the reasons for the nomination, such as any problems needing correction, anticipated results, need for special management, and need for protection or development;

c. a statement of the social, economic, and environmental impacts of the nomination;

d. a map showing the area nominated;

e. a statement as to why the area nominated was delineated as proposed and not greater or lesser in size or not in another location;

f. proposed guidelines and procedures for management of the area, including priorities of uses;

g. an explanation of how and why the proposed management program would achieve the desired results;

h. a statement as to how and why the designation of the area would be consistent with the state coastal management program and any affected local programs; and

i. a statement as to why and how the designation would be in the best interest of the state.

C. Administrative Review

1. The secretary shall review proposals for their suitability and consistency with the coastal management program.

2. If he finds that a proposal is suitable and consistent with the coastal management program, the secretary may, with the advice and assistance of affected local programs, prepare a draft "Proposal for a Special Area." The proposal shall consist of the delineation of the area to be designated, the guidelines and procedures for management, and priorities of uses.

3. Public notice announcing a public hearing on the proposal shall be given and published in a newspaper of general circulation in the affected parishes. Copies of the proposal may be obtained from the secretary upon request and copies shall be made available for public review at the offices of the secretary, offices of local programs, and at public libraries in affected parishes. Notice and copies of the proposals shall be sent to appropriate governmental bodies.

4. After the public hearing and consideration of all comments received at or before the hearings, the secretary shall determine whether to designate the area proposed, or a part of it or an approximately similar area, and adopt the guidelines and procedures for management and priorities of uses. Public notice of the secretary's decision shall be given.

D. Gubernatorial Establishment. The governor may designate special areas and establish the guidelines and procedures for management and priorities of uses applicable in such areas.

E. Establishment of Special Area. If the state coastal zone program has not yet received federal approval, the special area designation and its management program shall go into effect upon the order of the governor. If the coastal zone program has been federally approved, the special area designation and its management program shall go into effect after federal approval of the special area as an element or amendment of the state's coastal zone program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.30.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

Chapter 8. Coastal Restoration

Subchapter A. Coastal Restoration Project Construction Ranking

§801. Scope

A. This Chapter prescribes coastal restoration project construction ranking and cost-sharing standards and criteria based upon anticipated habitat benefits per Trust Fund (Wetlands Conservation and Restoration Trust Fund, as defined in R.S. 49:213.7) Dollar expended over the project life.

B. This Chapter shall apply only to those coastal restoration projects which are not joint ventures by the state and federal government and which are included in the coastal vegetated wetlands conservation and restoration plan, and any amendments thereto, adopted and implemented in accordance with R.S. 49:213.1 et seq. and 49:214.1 et seq. respectively.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 18:282 (March 1992).

§803. Definitions

Cost-Effectiveness Ranking the ranking established by dividing the cumulative habitat units of benefits by the aggregate trust fund dollar anticipated to be expended over the life of the proposed coastal restoration project. The cost-effectiveness ranking quotient shall be an indexing number used for assigning coastal restoration project construction priority.

Cost-Sharing a contribution, either monetary, in-kind, and/or both, by a local sponsor for a coastal restoration project from any non-trust-fund source for any or all of the following: design, construction, operation, maintenance, and monitoring, excluding feasibility, over the anticipated life of a particular project.

Cumulative Habitat Units of Benefit the total habitat units "with project" minus the total habitat units "without project."

Habitat Units the sum of the value(s) derived by multiplying the suitability index (Sl) value by the acreage for each coastal wetland type of the area of impact ascribable to the proposed project, as defined in Wetland Value Assessment Methodology employed for coastal restoration project evaluation and established in accordance with the Coastal Wetlands Planning, Protection, and Restoration Act of 1990, Public Law Number 101-646,104 Stat. 4779-4783, (1990).

Suitability Index a unitless number ranging from 0 to 1 wherein 0 represents a low value for fish and wildlife habitat and 1 represents a high value for fish and wildlife habitat. The suitability index for an area shall be determined by using the Wetland Value Assessment Methodology employed for coastal restoration project evaluation and established in accordance with the Coastal Wetlands Planning, Protection, and Restoration Act of 1990, Public Law Number 101-646,104 Stat. 4779-4783, (1990).

Total Habitat Units with Project the sum of the projected habitat units calculated over a time period equal to the life expectancy of the proposed project were it implemented.

Total Habitat Units without Project the sum of the projected habitat units calculated over a time period equal to the life expectancy of the proposed project, were it not implemented.

Trust Fund Dollars present value in 1990 allures from the Wetlands Conservation and Restoration Trust Fund, as defined in R.S. 49:213.7, of design and construction costs (excluding feasibility costs), plus operation, maintenance, and monitoring costs, minus cost sharing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 18:282 (March 1992).

§805. Ranking

A. Coastal restoration projects shall be constructed according to their cost-effectiveness ranking. In comparing projects, those projects with higher cost-effectiveness ranking indices shall have a correspondingly higher construction priority. In the event that two or more projects have identical cost-effectiveness rankings, projects benefiting the greatest number of coastal wetland acreage shall have a correspondingly higher construction priority. Coastal wetland acres shall include only those coastal wetland types as defined in Wetland Value Assessment Methodology employed for coastal restoration project evaluation and established in accordance with the Coastal Wetlands Planning, Protection, and Restoration Act of 1990, Public Law Number 101-646, 104 Stat. 4779-4783. (1990). Upon the initiation of the development of plans and specifications for the construction of a project, a project shall be removed from the construction ranking list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 18:282 (March 1992).

§807. Cost-Sharing

A. Feasibility. The state shall bear 100 percent of the feasibility costs of all coastal restoration projects.

B. Design and Construction. In all cases in which the local sponsor is able to identify and secure any appropriate non-trust-fund source(s) to fund the design and/or construction of a coastal restoration project, the local sponsor share of the design and/or construction costs may consist of any form and/or amount of cost-sharing. The state share of the design and/or construction costs shall consist of any form and/or amount of cost-sharing sufficient to meet the remaining design and/or construction costs of the project for which the local sponsor is unable to cost-share.

C. Operation, Maintenance, and Monitoring

1. In all cases in which the local sponsor is able to identify and secure any appropriate non-trust-fund source(s) to fund the operation, maintenance, and/or monitoring costs of a coastal restoration project, the state share of said costs shall consist of any form of cost-sharing not to exceed 75 percent of the said costs of the project for which the local sponsor is unable to cost-share and the local sponsor share of said costs shall consist of any form of cost-sharing not less than 25 percent of said costs from a non-trust-fund source.

2. In all cases in which the local sponsor is unable to identify and secure any appropriate non-trust-fund source(s) to cost-share the operation, maintenance, and/or monitoring costs of a coastal restoration project, the state shall bear 100 percent of these costs for which the local sponsor is unable cost-share.

D. The state shall accept any lawful cost-sharing, as defined in §803 and shall adjust the project's cost-effectiveness ranking accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 18:282 (March 1992).

Subchapter B. Oyster Lease Relocation Program

§850. Purpose

A. LAC 43:I.Chapter 8, Subchapter B is adopted pursuant to R.S. 56:432.1 et seq. to provide for the filing and processing, and the fair and expeditious Relocation of Oyster Leases, pursuant to Part XV of Chapter 1 of Title 56 of the Louisiana Revised Statutes of 1950. These rules are designed to insure that the relocation procedure is as simple as possible, and these rules shall be interpreted in that spirit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2288 (December 1998).

§851. Definitions

Affected Lease a current oyster lease which has been identified by the department from records provided and maintained by DWF as being located in a *coastal restoration project area*, for which project a specific funding source consistent with the provisions of either R.S. 56:432.1.E or R.S. 56:432.1.F is available, if required to implement these regulations and related statutes.

Coastal Restoration Project a project authorized pursuant to R.S. 49:213.6, funded pursuant to R.S. 49:213.7, and implemented by the secretary pursuant to R.S. 49:214.4.B and C.

Coastal Restoration Project Area geographical extent of a *coastal restoration project* as delineated by the responsible government agency or agencies for that project.

Cultch Currency Matrix an array used to determine the quantity of cultch material required to replicate certain substrate types located on specific lease areas.

Department the Louisiana Department of Natural Resources, its secretary, or his or her designee.

DWF the Louisiana Department of Wildlife and Fisheries, its secretary, or his or her designee.

Exchange Lease a lease or leases of comparable value to the *affected lease*.

Leaseholder the lessee of an oyster lease granted by DWF pursuant to R.S. 56:425 et seq., based on records provided and maintained by DWF.

Replacement Lease a lease or leases selected by the *leaseholder* in accordance with §855.G.

Secretary the Secretary of the Department of Natural Resources or his or her designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2288 (December 1998).

§852. Notification of Leaseholders

A. Upon a determination by the secretary that a specific coastal restoration project authorized pursuant to R.S. 49:213.6 may potentially have an adverse impact on existing oyster leases issued by DWF and if funding is required, a specific funding source consistent with R.S. 56:432.1.E or R.S. 56:432.1.F is available to implement this regulation for such project, the secretary shall, to the last address furnished to DWF by the leaseholder, make a reasonable effort to provide notice of the coastal restoration project to the leaseholders of all affected leases located, either partially or wholly, within the coastal restoration project area.

B. Any notification made by the secretary shall be deemed to have been made if sent by certified or priority United States mail, postage pre-paid, or pre-paid receipted express delivery service, or facsimile, to the last address furnished to DWF by the leaseholder. Such notification shall include, at a minimum:

1. a description of the coastal restoration project, and a map depicting the coastal restoration project area;

2. a copy of these regulations;

3. a statement that informs the leaseholder that the leaseholder's desire to participate in the relocation program must be confirmed in writing and delivered by certified mail to the secretary within 30 days of the date of the notification letter. The statement shall also inform the leaseholder that, should such confirmation not be received timely, then the department shall presume that the leaseholder does not desire to participate in the relocation program;

4. a statement that informs the leaseholders that limited funding is available, and that available funds used to implement the provisions of LAC 43:I.Chapter 8, Subchapter B shall be distributed to participating leaseholders in the order in which responses from the leaseholders are received (i.e., on a first come, first serve basis); and

5. a response form to be completed and returned to the department, which form shall provide information confirming the leaseholder's mailing address and the leaseholder's selection of a relocation option.

C. In the event that multiple responses returned to the department in accordance with §852.B.3 and §852.B.5 are received by the department on the same day, the order of priority for the utilization of available funds shall be established by the drawing of lots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2288 (December 1998).

§853. Options

A. Upon a determination by the secretary in accordance with LAC 43:I.852, the options listed in §§854, 855, 856 and 857 shall be available to leaseholder(s) of lease(s) located in a coastal restoration project area. Notwithstanding any other provision in these regulations to the contrary, any obligation of the department to expend funds shall be subject to the availability of funds as described in §852.A and the prioritization of funding as described in §852.B.4, except for the exchange option as provided in §854.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2289 (December 1998).

§854. Exchange

A. The exchange of an affected lease, including the department s responsibility for payment of application and survey costs, shall be subject to the availability of funds as described in §852.A and the prioritization of funding as described in §852.B.4. However, the secretary may, at his discretion, make the exchange option available for specific affected leases notwithstanding the unavailability of funds as described in §852.A.

B. A leaseholder may elect to exchange the affected lease for a lease or leases as described in §854.C on other acreage currently available for lease located outside of a coastal restoration project area which is acceptable to both the leaseholder and DWF. Lease exchanges shall be in accordance with R.S. 56:423.1.B(1) and shall serve as a continuance of comparable operations for the leaseholder. Exchange leases shall begin a new term. Subject to the provisions of §854.A, the department shall be responsible for all application and survey costs, except that payment will not be made for cost of survey of more than two replacement leases.

C. If the leaseholder elects this option, the department shall notify DWF. Affected leases shall be exchanged for a maximum number of exchange leases as follows provided that the combined acreage of the exchange lease or leases shall not exceed the acreage of the affected lease by more than 10 percent.

1. Affected leases between 0 and 20 acres in size shall be exchanged for no more than one exchange lease.

2. Affected leases between 21 and 200 acres in size shall be exchanged for no more than two exchange leases.

3. Affected leases between 201 and 500 acres in size shall be exchanged for no more than three exchange leases.

4. Affected leases between 501 and 1000 acres in size shall be exchanged for no more than four exchange leases.

D. Within 30 days of the department s receipt of the leaseholder s response required in accordance with §852.B, the leaseholder shall submit an application for an exchange lease or leases. Applications for exchange lease locations shall be submitted by the leaseholder and processed by DWF in accordance with the provisions of LAC 76:VII.501, "Oyster Leases," and §854.B and C.

E. Applications for exchange lease or leases shall be accompanied by a written request from the leaseholder to cancel the affected lease on December 31 of the calendar year immediately following the calendar year of application for the exchange lease or leases. This written request shall be executed by the leaseholder on a form provided by DWF. In the event that the term of the affected lease will expire prior to December 31 of the calendar year immediately following the calendar year of application for the exchange lease, the department shall request that DWF, in accordance with the provisions of R.S. 56:428.1, issue a one-year bobtail lease for that affected lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2289 (December 1998).

§855. Relocation

A. The relocation of an affected lease, including the department's responsibility for payment or reimbursement as provided in §855.C, shall be subject to the availability of funds and priority of funding, as described in §852.A and §852.B.4, respectively.

B. The leaseholder may elect to relocate the affected lease to another lease area. The affected lease shall be assessed to determine, according to the amounts in the "Cultch Currency Matrix," §859.A, Table 1, the quantity of cultch material needed to relocate the affected lease. The leaseholder shall cause the placement of that quantity of cultch material on:

1. any existing lease or leases held by the leaseholder (other than in a coastal restoration project area); or

2. new available lease acreage selected by the leaseholder in accordance with the provisions of §855.G.

C. Subject to the provisions of §855.A, the department shall provide the following to make the replacement lease of comparable value to the affected lease.

1. Reimbursement, in accordance with the department's determination of reasonable and allowable costs made under the provisions of §855.E, for the planting of the "Cultch Currency" equivalent in environmentally suitable cultch material.

2. Reimbursement, in accordance with the department's determination of reasonable and allowable costs made under the provisions of §855.E, for the relocation of any live seed oysters present from the affected lease.

3. Reimbursement, in accordance with the department's determination of reasonable and allowable costs made under the provisions of §855.E, for the marking, in accordance with the requirements of DWF, of the replacement lease.

4. The payment of any lease survey costs and application fees for the replacement lease or leases, except that payment will not be made for cost of survey of more than two replacement leases.

D. The affected lease shall be evaluated to determine its "Cultch Currency" equivalent in cubic yards. The "Cultch Currency Matrix," §859.A, Table 1, provides a method to determine the quantity of cultch material required to replicate the substrate types located on specific lease areas.

1. The leaseholder shall complete an authorization granting the department or its contractors the right to enter the affected lease for the purpose of making an assessment of that lease.

2. An oyster biologist, certified under the provisions of LAC 43:I.3905, "Rules Governing Proceedings Before the Oyster Lease Damage Evaluation Board, Certification and Selection of Biologists," shall assess the affected lease to determine the quantity of cultch material required to replicate the substrate in "Cultch Currency."

a. The bottom substrates of the affected lease shall be assessed and evaluated by the oyster biologist to determine the spacial extent of the different bottom substrates present on each affected lease. A bottom substrate map shall be drawn showing the areas of each substrate. The area of each substrate contained within the affected lease shall be multiplied by the "Cultch Currency" value shown in §859.A, Table 1 for that particular substrate. Using the Cultch Currency Matrix, the total value, in cubic yards, of the existing bottom substrates shall be determined by the department.

E. The leaseholder shall be notified, by certified or priority United States mail, postage pre-paid, or pre-paid receipted express delivery service, or facsimile, of the determination of the Cultch Currency equivalent of the existing lease, and the department s determination of the level of reimbursement which is reasonable and allowable to effect the placement of the cultch currency quantity on a replacement lease selected by the leaseholder; and cause the relocation of any living seed oysters; and effect the marking, in accordance with the requirements of DWF, of no more than two replacement leases.

1. Upon such notification, the leaseholder shall have 30 days to either accept the reimbursement offer made by the department, or to request purchase of the lease in accordance with §857.

2. In the event that the leaseholder disagrees with the determination made by the department of the total value of the existing bottom substrates according to the Cultch Currency Matrix, the leaseholder may file a request for reconsideration in accordance with §858.

F. Upon acceptance of the reimbursement offer, the leaseholder shall have 90 days to notify the department of the date and lease or leases on which it intends to cause the placement of the cultch; such date shall be no later than 12 months from the leaseholder's acceptance of the department s offer made in accordance with §855.E.1. Upon placement of the cultch, the leaseholder shall certify to the department, in writing, that such placement has occurred. Such certification shall be accompanied by a receipt or invoice for allowable costs of the cultch placement stating the cost of the placement, as well as the location and quantity of such placement. Within 90 days of the receipt of such certification, the department shall reimburse the leaseholder for the amount of the invoice or receipt; provided, however, that the department shall not reimburse the leaseholder for any amount in excess of the department's written determination of the level of reasonable and allowable compensation made in accordance with §855.E.

G. The leaseholder shall elect to place the cultch either on an existing lease or leases currently held by the leaseholder (provided that such existing lease or leases are not located in a coastal restoration project area), or on a replacement lease or leases. If the leaseholder elects the replacement lease or leases option, the department shall notify DWF. Affected leases shall be exchanged for a maximum number of replacement leases as follows provided that the combined acreage of the exchange lease or leases shall not exceed the acreage of the affected lease by more than 10 percent.

1. Affected leases between 0 and 20 acres in size shall be exchanged for no more than one replacement lease.

2. Affected leases between 21 and 200 acres in size shall be exchanged for no more than two replacement leases.

3. Affected leases between 201 and 500 acres in size shall be exchanged for no more than three replacement leases.

4. Affected leases between 501 and 1000 acres in size shall be exchanged for no more than four replacement leases.

H. Within 30 days of the mailing of the leaseholder's acceptance of the department's reimbursement offer, the leaseholder shall submit an application for replacement lease(s). Such applications shall be submitted and processed in accordance with the provisions of LAC 76:VII.501, "Oyster Leases" and §855.G.

I. Subject to the limitations of §855.I.1, the leaseholder shall have one year after the date on which the leaseholder's selection of its relocation option is mailed to the department in accordance with §852.B to remove any living seed and/or marketable oysters from the affected lease.

1. In the event that the department notifies the leaseholder that, due to coastal restoration project implementation schedules, less than one year will be available for the removal of living marketable and seed oysters from the affected lease, the leaseholder may request that the department provide compensation for the losses of living marketable and/or live seed oysters remaining on the affected lease. Subject to the availability of funds as described in §852.A and §852.B.4, the department shall cause the value of those remaining oyster resources to be determined, and, offer compensation for reasonable and allowable losses.

2. In the event that the department notifies the leaseholder, that due to delays in the coastal restoration project implementation schedules, more than one year exists

for the removal of living marketable and/or seed oysters from the affected leases, the secretary may, at his discretion, allow the leaseholder, to continue the removal of any living marketable and/or seed oysters provided that the leaseholder shall execute a receipt, release and hold harmless agreement which states that the lease is subservient and subordinate to the coastal restoration project and that the leaseholder accepts the risks of continuing to remove marketable and/or seed oysters in the area affected by this project.

J. Applications for replacement leases shall be accompanied by a written request from the leaseholder to cancel the affected lease on December 31 of the calendar year immediately following the calendar year of application for the replacement lease. This written request shall be executed by the leaseholder on a form provided by DWF. In the event that the affected lease term will expire prior to December 31 of the calendar year immediately following the calendar year of application for the replacement lease, the department shall request that DWF, in accordance with the provisions of R.S. 56:428.1, issue a one-year bobtail lease for the affected lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2289 (December 1998).

§856. Retention

A. The leaseholder may elect to retain the affected lease without compensation. If the leaseholder elects to retain the affected lease, he shall execute a release and hold harmless agreement and this election shall stipulate that the retained lease is subservient and subordinate to any coastal restoration project, and that the leaseholder accepts the risks of operating in the area affected by such projects.

B. Subsequent to election to retain, and in accordance with the provisions of R.S. 56:432.1.B(3), a leaseholder may seek to pursue another option specified in §854, §855, or §857. In such event, the leaseholder shall request the secretary's approval to utilize another option. The secretary shall make every reasonable effort to accommodate such requests. However, in the event that a funding source is not available which meets the requirements of R.S. 56:432.1.E or R.S. 56:432.1.F, such request shall be denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2291 (December 1998).

§857. Purchase

A. The department's purchase of an affected lease shall be subject to the availability of funds and priority of funding as described in §852.A and §852.B.4, respectively.

B. Subsequent to the department's notification its determination of reasonable and allowable compensation has been in accordance with §855.E, the leaseholder may elect to request that the department purchase the affected lease. The department, at its discretion, may purchase the affected lease, together with all improvements, if the purchase price is less than the reasonable and allowable compensation determined by the secretary in accordance with §855.E.

C. Upon execution of a mutually agreeable purchase agreement, and payment of the purchase price, the affected lease shall be canceled on December 31 of the calendar year of purchase.

D. The leaseholder may, at its sole cost, risk, and expense, remove living oyster resources from the purchased lease prior to its cancellation in accordance with §857.C, or prior to project implementation, whichever is earlier.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2291 (December 1998).

§858. Appeals

A. A determination of the level of reasonable and allowable compensation shall be reconsidered by the secretary upon the department's timely receipt of the leaseholder's written notice under §858.C.1.

B. The reconsideration by the secretary shall be limited to two bases.

1. The leaseholder has substantial technical information evidencing inaccuracies in the bottom substrate map prepared under the requirements of §855.E. for the affected lease, or inaccuracies in the assessment of the quantity of living (i.e., live seed and marketable) oysters on the affected lease.

2. The leaseholder has evidence that the determination of reasonable and allowable compensation is not consistent with the specific provisions of R.S. 56:432.1.

C. The leaseholder's request for reconsideration under §858 shall be made in writing to the secretary, within 30 days of the secretary's determination of reasonable and allowable costs, and shall include, at a minimum:

1. a description of the specific basis for the request for reconsideration; and

2. written report that includes specific technical information substantiating any alleged inaccuracies in the bottom substrate map or in the assessment of the quantity of living oysters on the affected lease.

D. The secretary's decision shall be made to the leaseholder, in writing, within 45 days of the department's receipt of the request for reconsideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2291 (December 1998).

§859. Cultch Currency Matrix

A. Table 1

Table 1 CULTCH CURRENCY MATRIX: Matrix Values and Corresponding "Cultch Currencies"		
Substrate Type	***Matrix Value**	**Cultch Currency (Cubic Yds/Acre)**
Reef	100 percent	187 cy/ac
Shell/Cultch	80 percent	150 cy/ac
Firm Mud	1 percent	2 cy/ac
Buried Shell	1 percent	2 cy/ac
Soft Mud/Sand	1 percent	2 cy/ac

B. The "Cultch Currency Matrix" is partially based on the Oyster Bottom Evaluation Methodology Report (Ray, Sammy M. 1996. Oyster Bottom Evaluation Methodology Report. Report to the DNR, Baton Rouge, LA 20pp.). The quantities of cultch listed are specific for the type of substrate that the leaseholder has on his existing lease. The DWF has determined that the rate of 150 cy/acre is sufficient to plant cultch for a state live seed ground and §859.A, Table 1 reflects that quantity as the cultch currency for the shell/cultch substrate type. The other cultch currency quantities are calculated depending on the matrix value percentage for each substrate.

C. Cultch Currency Matrix Example

Example

The *affected lease* is ten (10) acres in size and consists of 5 acres of shell reef, 2.5 acres of buried shell and 2.5 acres of soft mud. The formula for total cultch currency becomes:

Total Cultch Currency = the sum of substrate areas X cultch currencies/substrates or

Total Cultch Currency = Substrate 1 X Cultch 1 + Substrate 2 X Cultch 2 + Substrate 3 X Cultch 3

where

Substrate 1 = the quantity, in acres, of the Substrate Type 1 on the affected lease,
Cultch 1 = the cultch currency value, in cy/acre, of Substrate Type 1 on the affected lease,
Substrate 2 = the quantity, in acres, of the Substrate Type 2 on the affected lease,
Cultch 2 = the cultch currency value, in cy/acre, of Substrate Type 2 on the affected lease,
Substrate 3 = the quantity, in acres, of the Substrate Type 3 on the affected lease, and
Cultch 3 = the cultch currency value, in cy/acre, of Substrate Type 3 on the affected lease.

Using Table 1, in our example, our formula and values become:

Total Cultch Currency = 5 ac (shell reef) X 187 cy/ac + 2.5 ac (buried shell) X 2 cy/ac + 2.5 ac (soft mud) X 2 cy/ac
Total Cultch Currency = 5 X 187 cy/ac+ 2.5 X 2 cy/ac + 2.5 X 2 cy/ac = 935 cy + 5 cy + 5 cy = 945 cy of cultch

Therefore in our example, 945 cy of cultch material is needed to relocate the existing 10 acre lease consisting of 5 acres of shell reef, 2.5 acres of moderate buried shell and 2.5 acres of soft mud. This amount of cultch material would be delivered by the leaseholder and, if approved, the costs will be reimbursed by DNR, to the leases(s) of the leaseholder s choosing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2291 (December 1998).

Subchapter C. Rules Governing Davis Pond Oyster Relocation Program

§875. Purpose

A. These special rules are adopted pursuant to R.S. 56:432.1, et seq. to provide for the filing and processing of applications for, and for the fair and expeditious relocation of, oyster beds in the Davis Pond Oyster Influence Area (the program). These rules supercede the provisions of Subchapter B insofar as Subchapter B may otherwise apply to the Davis Pond Oyster Influence Area.

B. Pursuant to R.S. 56:432.1E., these rules are intended to implement federal plans, programs and requirements regarding the Davis Pond Freshwater Diversion Project Feature of the Mississippi Delta Region Project, (Project) constructed pursuant to the Flood Control Act of 1928, Public Law 391 of the Seventieth Congress, as amended by the Flood Control Act of 1965, Public Law 89-298, the Water Resources Development Act of 1986, Public Law 99-662, Section 365 of the Water Resources Development Act of 1996, Public Law 104-303, and the Water Resources Development Act of 1999, Public Law 106-53 and shall so be interpreted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1483 (July 2000).

§877. Definitions

Active Lease any oyster lease currently on record with the Louisiana Department of Wildlife and Fisheries located in whole or part within the Davis Pond Oyster Influence Area for which all fees have been paid for the current term of the lease.

Affected Lease an active lease determined pursuant to these rules to be productive.

Davis Pond Oyster Influence Area that area of the Barataria Bay estuary north of the 5 parts per thousand isohaline line delineated in Volume 1, Plate 10 of the Louisiana Coastal Area Feasibility Study, dated September, 1984.

Coastal Restoration Project Area geographical extent of a Coastal Restoration Project as delineated by the responsible government agency or agencies for that project.

Department the Louisiana Department of Natural Resources, its secretary, or the secretary's designee.

Department of Wildlife and Fisheries the Louisiana Department of Wildlife and Fisheries, its secretary, or the secretary's designee.

Exchange Lease(s) a lease or leases, located entirely outside of any Coastal Restoration Project Area and entirely outside Davis Pond Oyster Influence Area, received by a leaseholder in exchange for an affected lease pursuant to §883.

Leaseholder the lessee of an oyster lease granted by the Department of Wildlife and Fisheries pursuant to R.S. 56:425 et seq., as appears on records provided and maintained by the Department of Wildlife and Fisheries.

Productive Lease an active lease found by the secretary to have a suitable substrate that is capable of sustaining commercial oyster production, and is in a location on the "Melancon" maps as having an appropriate salinity regime to sustain oyster production and is not in a Louisiana Department of Health and Hospitals "prohibited area" as delineated according to applicable statutes and regulations in effect on the date the election is made. If an active lease does not meet these criteria, the leaseholder may submit to the secretary within 60 days after the date the election is made additional information to substantiate in accordance with the requirements of §895, that the particular lease is capable of sustaining commercial oyster production, and on the basis of such information and any other information, the secretary shall determine whether or not the lease is productive for the purposes of this regulation. Melancon, E. J., Jr. et al. 1998 *Journal of Shellfish Research.* (4):1143-1148.

Relocation Cultch Material the quantity of material allowed by the department to substitute for the reef and shell/cultch substrate areas on an affected lease and comparable to those amounts used by the Department of Wildlife and Fisheries in establishing the public seed ground areas.

Replacement Lease(s) a lease or leases located entirely outside any Coastal Restoration Project Area, and outside Davis Pond Oyster Influence Area, selected by the leaseholder in accordance with §885.E.

Secretary the Secretary of the Department of Natural Resources or the secretary's designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1483 (July 2000).

§879. Notification of Leaseholders

A. The secretary shall make a reasonable effort to provide notice of the program to all affected leaseholders.

B. The secretary shall send to leaseholders of affected leases a notice including the following:

1. a description and map of the Davis Pond Oyster Influence Area;

2. a copy of these regulations;

3. a statement informing the leaseholder that the leaseholder's desire to participate in the program must be confirmed in writing and delivered by certified mail to the secretary within 30 days of the date of receipt of the notice. The statement shall also inform the leaseholder that, if such confirmation not be received timely, the leaseholder shall be deemed to have elected not to participate in the program;

4. a statement informing the leaseholders that limited funding is available, and that available funds used to implement the program shall be distributed to participating leaseholders in the manner determined by the secretary pursuant to §891; and

5. a response form to be completed and returned to the department, which form shall provide information confirming the leaseholder's mailing address and the leaseholder's selection of a relocation option. The forms shall include an authorization granting the department or its contractors the right to enter the affected lease for the purpose of surveying and making an assessment of each affected lease.

C. Notice shall be deemed to have been made if sent by United States certified mail, return receipt requested, to the last address furnished to the Louisiana Department of Wildlife and Fisheries by the leaseholder.

D. The department will publish a list of all the leaseholders of affected leases in the official state journals of the parishes where affected leases are located, notifying the leaseholders of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1484 (July 2000).

§881. Leaseholder Options

A. Leaseholder(s) of affected lease(s) may select one option from those available in §883, 885, 887, and 889, except as otherwise provide in §887.B. Notwithstanding any other provision in these regulations to the contrary, any obligation of the department to expend funds shall be subject to the availability of funds as described in the provisions of §891.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1484 (July 2000).

§883. Exchange Option

A. The exchange of an affected lease, including the department's responsibility for payment of application and survey costs, shall be subject to the availability of funds as described in the provisions of §891.

B. A leaseholder may elect to exchange the affected lease for an exchange lease or leases as described in Subsection C below which is acceptable to both the leaseholder and the Department of Wildlife and Fisheries. Lease exchanges shall be in accordance with R.S. 56:432.1.B.(1). Exchange leases shall begin a new term. Subject to the provisions of §883.A, the department shall reimburse the applicants for all application and survey costs.

C. If the leaseholder elects this option, the department shall notify the department of Wildlife and Fisheries. affected leases shall be exchanged for a maximum number of exchange leases as follows provided that the combined acreage of the exchange lease or leases shall not exceed the acreage of the affected lease by more than 10 percent:

1. affected leases between 0 and 20 acres in size shall be exchanged for no more than one exchange lease;

2. affected leases between 21 and 200 acres in size shall be exchanged for no more than two exchange leases; and

3. affected leases between 201 and 500 acres in size shall be exchanged for no more than three exchange leases;

4. affected leases between 501 and 1000 acres in size shall be exchanged for no more than four exchange leases.

D. Within 30 days of the department's receipt of the leaseholder's response required in accordance with §879.B, the leaseholder shall submit to the Department of Wildlife and Fisheries an application for an exchange lease or leases. Applications for exchange lease locations shall be submitted by the leaseholder and processed by the Department of Wildlife and Fisheries in accordance with the provisions of LAC Title 76, Chapter 5, Section 501, Oyster Leases, and Subparts §883.B and C above.

E. Applications for exchange lease or leases shall be accompanied by a written request from the leaseholder to cancel the affected lease on December 31 of the calendar year immediately following the calendar year of application for the exchange lease. In the event that the term of the affected lease will expire prior to December 31 of the calendar year immediately following the calendar year of application for the exchange lease, the department shall request that the Department of Wildlife and Fisheries, in accordance with the provisions of R.S. 56:428.1, issue a one-year lease for that affected lease.

F. If the leaseholder fails to submit timely application for an exchange lease or leases, or fails to receive an exchange lease before the expiration date of the affected lease, the leaseholder shall be deemed to have made an election to retain the affected lease as provided in §887, effective as of December 31 of the calendar year following the last date allowed for submission of the application, and the request for cancellation of the affected lease shall be deemed withdrawn.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1484 (July 2000).

§885. Relocation Option

A. The relocation of an affected lease, including the department's responsibility for payment or reimbursement as provided in §885.C, shall be subject to the availability of funds, as described in the provisions of §891.

B. The leaseholder may elect to relocate the affected lease to a replacement lease. The affected lease shall be assessed by the department during the 1999 and 2000 calendar years, by any means, including but not limited to side-scan sonar, to determine the quantity of Relocation Cultch Material allowable to relocate the affected lease. The leaseholder shall cause the placement of that quantity of cultch material on a replacement lease.

C. Subject to the provisions of §885.A above, the secretary shall determine and provide the following:

1. reimbursement of the actual cost of placement of Relocation Cultch Material, but not in excess of the secretary's determination of reasonable and allowable costs made under the provisions of §885.D of this Part;

2. reimbursement of the actual cost of relocation of any live seed oysters from the affected lease, but not in excess of the secretary's determination of reasonable and allowable costs made under the provisions of §885.D of this Part.

D. The leaseholder of each affected lease shall be notified, in the initial notification, in accordance with §879.B, by certified registered United States Mail, postage pre-paid, or pre-paid receipted express delivery service, of the determination of the Relocation Cultch Material allowable for the existing lease, and the department's determination of the amount in dollars of reimbursement which is reasonable and allowable to:

1. effect the placement of the Relocation Cultch Material on the replacement lease(s) selected by the leaseholder; and

2. effect the relocation of any living seed oysters from the affected lease.

> Upon such notification, the leaseholder shall have 30 days to notify the department in writing to either accept the reimbursement offer made by the department, to request purchase of the lease in accordance with §889, or to appeal in accordance with §895.

E. Upon acceptance of the relocation offer, the leaseholder shall have 90 days to notify the department of the date and the replacement lease by which the leaseholder will cause placement of the cultch; such date shall be no later than 12 months from the leaseholder's acceptance of the department's offer made in accordance with §885.D. The secretary may extend this period for good cause shown. Upon placement of the cultch, the leaseholder shall certify to the department, in writing, that such placement has occurred. Such certification shall be accompanied by receipts or invoices for the actual cost of the cultch placement, as well as the location and quantity of such placement. Payment for actual expenses incurred by the leaseholder shall be made pursuant to §891, but not in excess of the secretary's written determination of the level of reasonable and allowable compensation made in accordance with §885.D of this regulation.

F. If on the date the relocation option is made a leaseholder of an affected lease is not then the lessee of a replacement lease on which relocation cultch material can reasonably be placed, as determined by the secretary,

reimbursement will be made for application fees and lease survey and marking costs of a new replacement lease for an area not in excess of the area of the affected lease by more than 10 percent. The leaseholder must, by written request, give notice to the Department of Wildlife and Fisheries and the department to cancel the affected lease on December 31 of the calendar year immediately following the calendar year of the department's receipt of the notification letter as provided for in §879. Payment to the leaseholder shall be withheld until the written cancellation notices are received. For good cause shown in writing by the leaseholder, the secretary may request the Department of Wildlife and Fisheries to extend the cancellation date of the affected lease, or may request that the Department of Wildlife and Fisheries to issue a one-year lease pursuant to R.S. 56:428.1.

G. Subject to the limitations of Paragraph G..1 below, the leaseholder shall have one year after the date on which the leaseholder's selection of the relocation option is mailed to the department in accordance with §879.B of this regulation to remove any living oysters, both seed and marketable, from the affected lease, at the sole risk and cost of the leaseholder, except for costs allowed in accordance with §885.C.2.

1. In the event that the department notifies the leaseholder that, due to implementation schedules of the Davis Pond Freshwater Diversion feature of the Mississippi Delta Region Project, less than one year will be available for the removal of living oysters, both seed and marketable, from the affected lease, the leaseholder may request that the department provide compensation for any project impacts, causing the loss of living oysters remaining on the affected lease. Subject to the availability of funds as described in the provisions of §891, the secretary may, at his discretion, determine the reasonable value of oysters not reasonably removable within the time available and offer compensation for reasonable and allowable losses.

2. In the event that the department notifies the leaseholder that due to delays in the Coastal Restoration Project implementation schedules, of the Davis Pond Freshwater Diversion feature of the Mississippi Delta Region Project, more than one year exists for the removal of living oysters from the affected leases, the secretary may, at his discretion, allow the leaseholder, to continue the removal of any living oysters, during the existence of the lease including renewals, provided that the leaseholder shall execute a receipt, release and hold harmless agreement in favor of the United States Government, including the U.S. Army Corps of Engineers, and the State of Louisiana, including the Louisiana Department of Natural Resources and the Louisiana Department of Wildlife and Fisheries, in accordance with the terms and provisions of the release, indemnity and hold harmless agreement set forth in §893 of this Agreement and shall provide that the lease is subservient and subordinate to the Davis Pond Freshwater Diversion feature of the Mississippi Delta Region Project, and to any other Coastal Restoration Project and that the leaseholder accepts the risks of continuing to remove living oysters in the area affected by the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1485 (July 2000).

§887. Retention Option

A. The leaseholder may elect to retain the affected lease without compensation. If the leaseholder elects to retain the affected lease, he shall execute a written release indemnification and hold harmless agreement in favor of the United States Government, including the U.S. Army Corps of Engineers, and the State of Louisiana, including the Louisiana Department of Natural Resources and the Louisiana Department of Wildlife and Fisheries, in accordance with the terms and provisions of the release, indemnity and hold harmless agreement set forth in §893 of this agreement and this election shall stipulate that the retained lease is subservient and subordinate to the Davis Pond Freshwater Diversion feature of the Mississippi Delta Region Project, and to any Coastal Restoration Project, past, present or future, and that the leaseholder accepts all risks of operating in the area affected by such projects including, but not limited to all damage which may be sustained by or to the lease or the oysters located therein; however, the hold harmless agreement for the retention option must also provide the right of the leaseholder under §887.B to elect an alternative option within one year from the initial selection of the retention option.

B. Subsequent to an election to retain, and in accordance with the provisions of R.S. 56:432.1.B.(3), a leaseholder may seek to pursue another option specified in §883, §885, or §889. In such event, the leaseholder shall request the secretary s approval to utilize another option. The secretary shall make every reasonable effort to accommodate such requests. However, if all available funds have been previously expended pursuant to §891, such request shall be denied. The election of an additional option under this subpart must be made within one year from the official opening of the Davis Pond Freshwater Diversion Project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1486 (July 2000).

§889. Purchase Option

A. The department's purchase of an affected lease shall be subject to the availability of funds as described in provisions of §891.

B. The leaseholder may elect to request that the department purchase the affected lease. The department, at its discretion, may purchase the affected lease, together with all improvements for a purchase price not to exceed the allowable cost determined in §885.C.1, for the placement of cultch. The cost of seed oyster relocation, application fees and surveying and marking of new leases will not be included in the purchase price. Payment of the purchase price shall be subject to the provisions of §891.

C. Upon execution of a mutually agreeable purchase agreement, the affected lease shall be canceled on December 31 of the calendar year of purchase.

D. The leaseholder may, at its sole cost, risk, and expense, remove living oysters, both seed and marketable, from the purchased lease prior to its cancellation in accordance with §889.C, above. If the oysters are not reasonably removable within the time available, the leaseholder may request compensation for lost oysters as provided in §885.G.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1486 (July 2000).

§891. Payment

A. Inasmuch as sufficient funds may not be made available to pay in full all amounts determined by the secretary to be the actual costs, allowable and payable pursuant to these regulations, the secretary may make partial payments to leaseholders as option selections are processed, while maintaining a reserve fund until all timely made selections are processed, to the end that all leaseholders will receive the same ratable payment of the amounts authorized for payment with respect to each affected lease, to the extent reasonably practicable. No interest will be allowed or taken into account. All payments made or proposed to be made under these rules are conditional on the allowance by the Secretary of the Army of such payments as a credit to the state of Louisiana toward its non-federal share of the cost of the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1486 (July 2000).

§893. Release

A. In consideration for any benefits or payments received under any of the options set forth in these regulations, specifically §§883, 885, 887, and/or 889, each leaseholder of an affected lease and/or any person and/or corporate person holding a property interest in an affected lease shall execute a receipt, release, indemnity and hold harmless agreement in favor of the United States of America, including the U.S. Army Corps of Engineers, the State of Louisiana, including the Louisiana Department of Natural Resources and the Louisiana Department of Wildlife and Fisheries, indicating that full and fair compensation has been made in complete satisfaction of all claims against the state and the United States of America, including the U.S. Army Corps of Engineers, related to past, present or future oyster damages in the affected lease, and related losses and expenses, including all claims in tort, pursuant to contract, or inverse condemnation theories and/or under any other applicable theory of recovery, including, but not limited to, 28 U.S.C. §1497. However, the hold harmless agreement for the retention option must also provide the right of the leaseholder under §887.B to elect an alternative option within one year from the initial selection of the retention option.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1487 (July 2000).

§895. Appeals

A. A determination of the level of reasonable and allowable compensation shall be reconsidered by the secretary upon the department's timely receipt of the leaseholder's written notice under §895.C.

B. The reconsideration by the secretary shall be limited to two bases:

1. the leaseholder has substantial technical information evidencing inaccuracies in the measurement of a leases s bottom substrate, or inaccuracies in the assessment of the commercial quantity of living (i.e., live seed and marketable) oysters on the affected lease in applicable cases; or

2. the leaseholder has evidence that the determination of reasonable and allowable compensation is manifestly in error.

C. The leaseholder's request for reconsideration under this subpart shall be made in writing to the secretary, within 30 days of the secretary's determination of reasonable and allowable costs, and shall include, at a minimum:

1. a description of the specific basis for the request for reconsideration; and

2. a written report that includes specific technical information substantiating any alleged inaccuracies in the bottom substrate measurement or in the assessment of the quantity of living oysters on the affected lease.

D. The secretary's decision shall be made to the leaseholder, in writing, within 45 days of the department's receipt of the request for reconsideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1487 (July 2000).

Chapter 9. Mineral Resources

Subchapter A. Mineral Leasing Policy

§901. Proposal Review

A. Proposals pursuant to R.S. 30:125, 126, 208, 209 or otherwise, for the leasing or use by other contractual means of state properties for exploration, production and maintenance of oil and gas and other minerals, shall be reviewed and evaluated by the secretary in any manner that he deems proper and sufficient including, but not limited to

an inspection of such property and all geophysical and geological surveys and/or any other evaluation in order to determine whether or not said proposals meet substantially with the following standards and considerations, which are determined as being the policy of the state and the department.

1. Tracts containing interspersed water bodies should be limited to 3 1/2 miles in length and width. An application for a lease of more than 2,500 acres of state lands and waterbottoms or more than one block will not be considered.

2. Applications concerning inland water areas not delineated by a block system shall be submitted on an original or copy of a U.S. Geological Survey Quadrangle Sheet Scale 1:62,500 or 1:24,000 (15 miles or 7 1/2 minutes respectively), with the proposed tract outlined and clearly shown thereon.

3. The size of the property shall be considered and after evaluation may be reduced if it is determined by such evaluation that it is proper and sufficient that only a portion of the property need be leased so as not to restrict the further development of the remaining portion.

4. All tracts shall be advertised as to all depths, except for any depths then under lease.

5. Leasing of properties in the vicinity of existing intrastate pipeline facilities or for which information can be supplied by an applicant or otherwise obtained as to future availability and economic feasibility of such intrastate facilities will receive preferential consideration.

6. Leasing of properties within the 3-mile offshore area as presently determined shall be considered in accordance with special conditions guaranteeing to the state the payment of royalties if provided by policy resolution of the State Mineral Board.

7. Leasing of properties that are suspect of being drained by other existing wells will be given favorable consideration.

8. Where contiguous properties in one area are proposed for lease the state may, after evaluation, submit the tracts or portions of the tract together with other state tracts for leasing in a manner designed to promote proper development of the area to the maximum benefit of the state.

9. Where consistent with Paragraph 5 above, applicants are encouraged to submit applications for leasing of heretofore undeveloped areas.

10. Wherein the title is in dispute more favorable consideration will be given those properties where the state's title is the strongest.

11. Leasing of properties that are within fields or areas known to be previously dedicated to presently existing gas contracts calling for minimum prices or interstate delivery will not be considered except upon a formal release of such obligation, unless failure to lease such property would result in drainage to the state.

12. Commitments in applications to drill deep wells (i.e., geological objectives heretofore undrilled in the immediate area) are encouraged and will be looked upon more favorably despite other policy deficiencies.

13. Applications shall set forth the primary term of any lease sought. Applications for the following leases will not be considered:

a. those for lands and waterbottoms landward of the legal coastline of Louisiana, exclusive of Ascension Bay, for a primary term in excess of three years;

b. those for waterbottoms seaward of the legal coastline or, in that area known as Ascension Bay, for a primary term in excess of five years;

c. those for state agency lands for a primary term in excess of three years.

14. Tracts on which all bids are rejected and portions of tracts bid on but rejected because conflicting in part with an accepted bid shall be readvertised and offered at the next regular sale for which such tracts or portions can qualify.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 4:210 (May 1978).

§903. Laws, Instructions

A. A synopsis of applicable laws and general instructions will be available for interested parties to assist in preparing applications for leasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 4:210 (May 1978).

§905. Lease Proposal Requirements

A. It shall not be necessary that a lease proposal covering state properties meet all of the above requirements before it will be considered; however, the merits of each proposal shall be evaluated and the decision on whether or not to recommend such for lease shall be based on the findings of the secretary as to what is deemed to be in the best interest of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 4:210 (May 1978).

§907. Information Availability

A. The secretary may require any applicant to submit such other information that he may determine necessary and useful to properly evaluate any proposal which is submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 4:210 (May 1978).

§909. Policy Waiver

A. The policies and provisions set forth herein may be waived in whole or in part by the secretary if for just cause shown he determines that the best interests of the state are served thereby.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 4:210 (May 1978).

§911. Lease Proposal Evaluation

A. Upon completion of the evaluation the secretary shall in accordance with R.S. 36:354(A)(2)(b), take the necessary action through the Office of Mineral Resources to implement his findings with respect thereto and shall advise the State Mineral Board through its chairman, whether the lease proposal meets the policies of the state and department and should therefore be advertised for lease by the Mineral Board or whether the lease proposal does not meet the policies of the state and department and should therefore not be advertised for lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.A.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 4:210 (May 1978).

Subchapter B. Application for Approval of Transfer of Solid Mineral Lease or Sublease

The rules contained herein shall govern every application for approval by the State Mineral Board of a proposed transfer of any lease or sublease entered into by or under the authority of or subject to the jurisdiction of the State Mineral Board which includes the development and production of solid minerals, under the circumstances described in Act 296 of 1979.

§913. Definitions

A. As used in these regulations, the following terms have the meanings assigned below, unless the context otherwise requires.

Applicant the person seeking approval by the board of a proposed transfer (as described in Act 296 of 1979) of a lease.

Board the State Mineral Board of the state of Louisiana.

Control the term control (including the terms controlling, controlled by and under common control with) means possession (direct or indirect) of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Director any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

Lease any lease or sublease entered into by or under the authority of or subject to the jurisdiction of the board which includes the development and production of solid minerals.

Lessee a person or entity which at the time of a proposed transfer (as described in Act 296 of 1979) has the right to develop and produce solid minerals under a lease.

Officer the chairman, the president, each vice-president in charge of a principal business function, the secretary, the treasurer, and the comptroller, and any other person performing similar functions with respect to any organizations whether incorporated or unincorporated.

Person a natural person, partnership, syndicate, corporation or any other group or entity.

Secretary the Secretary of the Department of Natural Resources.

B. Other terms used in these regulations have the same meanings as are set forth in Act 296 of 1979 unless the context otherwise requires.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:131 (March 1980).

§915. Procedure for Preparing and Filing Applications

A. Date of Filing. At least 20 days (Saturdays, Sundays, and holidays excluded) prior to the date on which the transfer is to be effected, or in the case of a transfer by means of purchase of 10 percent or more of equity securities of the lessee, 20 days prior to such purchase, an application shall be filed with the secretary and delivered by hand to the lessee.

B. Number of Copies and Accompanying Material

1. Two signed copies of the application (including exhibits and all other accompanying papers and documents) shall be filed with the secretary at the Department of Natural Resources, Baton Rouge, Louisiana 70804. One signed copy of such application shall be delivered to the lessee.

2. Each application shall be accompanied by a signed consent of the applicant to the appointment of the secretary as his or its agent for service of any and all pleadings, discovery requests, orders and investigations relating to the application, and, if the applicant is a corporation, by a consent signed by each director and each officer of the applicant (and by each director and each officer of any corporation controlling the applicant) and by any other person identified under §917.A.4.a.ii hereof, agreeing to make himself available for prehearing investigatory or discovery proceedings either in the state of Louisiana or in the state in which the lessee maintains its or his principal executive offices.

3. Each application shall be accompanied by a certified or bank cashier's check in the amount of $100, payable to secretary, Department of Natural Resources, as an examination fee and, except as provided in §923, by a surety bond issued by a bonding company licensed to do business in the state of Louisiana in the principal amount of $5,000 (or such lesser amount as the secretary may permit upon request) conditioned to provide for payment of the costs of any investigation or hearing with respect to the application.

4. If the applicant is a corporation, the application shall also be accompanied by a certified copy of a resolution or resolutions of the board of directors of such applicant

(and of any corporation controlling such applicant) specifically authorizing the person or persons signing the application and any consent on behalf of the applicant to sign and file the same.

C. Requirements as to Paper, Printing, and Language

1. The application shall be filed on good quality, unglazed, white paper, 8 1/2 by 14 inches in size, insofar as practicable.

2. The application and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed, or typewritten. All copies of applications and associated material shall be easily readable and suitable for repeated photocopying.

3. The application shall be in the English language. Any associated material filed with the application in a foreign language shall be accompanied by a translation into the English language.

D. Presentation of Information

1. Except as otherwise provided:

a. the application requires information only as to the applicant;

b. whenever words relate to the future, they have reference solely to present intention; and

c. any words indicating the holder of a position or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or offices.

2. Unless clearly indicated otherwise, information set forth in any part of the application need not be duplicated elsewhere in the application. Where it is deemed necessary or desirable to call attention to such information in more than one part of the application, appropriate cross-references are permitted.

3. Material contained in any exhibit to the application may be incorporated by reference in the application. Such material shall be clearly identified in the reference, and an express statement that the specified matter is incorporated by reference shall be made at the particular place in the application where the information is required. Material shall not be incorporated by reference in any case where such incorporation would render the application incomplete, unclear or confusing.

4. Information need be given only insofar as it is known or reasonably available to the applicant. If any required information is unknown and not reasonably available to the applicant, either because the obtaining thereof would involve unreasonable effort or expense or because it rests within the knowledge of another person not affiliated with the applicant, the information may be omitted, subject to the following conditions.

a. The applicant shall give such information on the subject as he/she possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

b. The applicant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

5. The application shall set forth such additional material facts, if any, as may be necessary to make the required information, in the light of the circumstances under which it is provided, not misleading. The secretary may at any time request an applicant to submit additional relevant information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:131 (March 1980).

§917. Content of Application

A. Each application shall contain the information required by Act 296 of 1979 and by this rule, §917.

1. Information as to the Lessee. Set forth the name of the lessee and the address of its principal executive offices and describe, insofar as practicable, the lease or leases of the lessee which it is proposed to transfer and the operations or other activities currently being conducted in relation to such lease or leases.

2. Information as to the Applicant. If the applicant is a corporation, partnership, limited partnership, syndicate or other group of persons, the application shall set forth its name, the state or other place of its organization, its principal business, the address of its principal executive offices and the information required by Subparagraphs A.2.e and f below. If the applicant is natural person, the application shall set forth the information specified in Subparagraphs A.2.a-g below with respect to such person(s). If the applicant is a corporation not subject to the reporting requirements of the federal securities laws, there shall be filed as exhibits audited financial statements for its three most recent fiscal years and interim financial statements for any subsequent period through the end of the last preceding calendar quarter for which such statements are available.

a. Name.

b. Residence or business address.

c. Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment or occupation is conducted.

d. Material occupations, positions, offices or employments during the last five years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which occupation, position, office or employment was carried on.

e. Whether or not, during the last five years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if

so, giving the dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

f. Whether or not the applicant has, during the last five years, been a party to, or materially adversely affected by, any judicial or administrative proceeding under any law or regulation regulating exploration, development, production or other operations involving any solid minerals or other extractive industry or activity, or under any law or regulation regulating the discharge of materials into the environment or otherwise relating to the protection of the environment, and if so, describing fully any such proceeding, including the disposition thereof. Copies of all material pleadings and of all orders and judgments therein shall be filed as exhibits.

g. Citizenship(s)

i. Instruction. If the application is filed by a partnership, limited partnership, syndicate or other group, the information called for by §917.A.2 shall be given with respect to:

(a). each partner of such partnership;

(b). each partner who is denominated as a general partner or who functions as a general partner of such limited partnership;

(c). each member of such syndicate or group; and

(d). each person controlling such partner or member.

ii. If the statement is filed by a corporation, or if a person referred to in Subclause (a), (b), (c), or (d) of Clause A.2.g is a corporation, the information called for by the above mentioned items shall be given with respect to:

(a). each officer and director of such corporation;

(b). each person controlling such corporation; and

(c). each officer and director of any corporation ultimately in control of such corporation.

3. Manner of Transfer. The application shall set forth the manner in which the applicant proposes to effect the transfer of the lease or leases (including, without limitation, the manner in which the transfer is to be financed and the terms of any agreement or understanding with respect to the transfer) and the applicant shall file as exhibits all relevant contracts and agreements, together with any documents required to be filed under any other law or regulation in consequence of such proposed transfer. The application shall also set forth a description of the background of the proposed transfer.

4. Information about the Applicant's Relevant Experience

a. The applicant shall fully describe his or its experience and capabilities to assume responsibility for operations under the lease or leases, including (without limitation) the following information.

i. Applicant's experience in the solid minerals and other extractive industries during the five years next preceding the application.

ii. If the applicant is other than a natural person, the names, titles and addresses of the officers or other persons who would have primary responsibility for the conduct of operations under the lease or leases and, as to each such person, his educational background, his professional background, including his present job responsibilities, and the information called for under Paragraph A.2 of this Section.

iii. The names and addresses of any expert in the field of expertise relevant to the lease or leases or operations thereunder who has been retained by the applicant at any time during the past five years and a statement of the nature of such retention. Copies of any report(s) rendered to the applicant by any such expert(s) shall be filed as exhibits.

b. Instruction. It is not sufficient compliance to recite the applicant's intention to rely upon the lessee's experience unless the applicant and lessee have entered into a formal written agreement for a term ending with or after the unexpired portion of the lease, under which the lessee will manage the property or properties subject to the lease. Any such agreement shall be filed as an exhibit to the application.

5. Plans of the Applicant with Respect to the Lease. The application shall describe any plans or proposals of the applicant which relate to exploration, development, production or other operations under the lease or leases, including, without limitation, any loan or proposal to do the following:

a. to increase, reduce or abandon such operations;

b. to retain any person to conduct such operations;

c. to transfer the lease or leases;

d. to seek modification of its or their terms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:132 (March 1980).

§919. Exhibits

A. Additional Exhibits. The applicant may file such exhibits as he/she may desire in addition to those required under §917. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

B. Omission of Substantially Identical Documents. In any case where two or more contracts, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, the applicant need file a copy of only one of such documents, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the document of which a copy is filed. The secretary may at any time, in his discretion, require the filing of copies of any documents so omitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980).

§921. Amendments

A. Formal Requirements for Amendments. One copy of each amendment to an application shall be filed with the secretary, and delivered by hand to the lessee, promptly upon the occurrence of the event necessitating such amendment.

B. Withdrawal of Application or Amendment. Any application or any amendment or exhibit thereto may be withdrawn upon written request to the secretary. The request shall be signed and shall state the grounds upon which made. The request shall be deemed granted five days after receipt by the secretary, unless he shall order conditions to the grant thereof, in which event withdrawal will be effective upon written notice to him of compliance therewith. If an application is withdrawn, the examination fee paid upon the filing of the application will not be returned. The papers comprising any withdrawn application or amendment or exhibit thereto shall not be removed from the files of the secretary but shall be retained therein.

C. Powers to Amend or Withdraw Application. All persons signing an application shall be deemed, in the absence of a statement to the contrary, to possess the following powers:

1. to amend the application; or

2. to request the withdrawal of an application, an amendment or an exhibit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980).

§923. Application for Determination without Investigation or Hearing

A. An application filed in compliance with these rules may be accompanied by a request that the secretary transmit a recommended decision on the application to the board without first conducting an investigation or holding a hearing. Any such request shall be signed by or on behalf of the applicant and be accompanied by affidavits from each of:

1. the applicant (or an officer of the applicant); and

2. the lessee (or an officer of the lessee) stating that in their opinion there are no substantial issues requiring an investigation or hearing. In the event such request is denied, the applicant shall promptly thereafter file the surety bond required by §915.B.3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980).

Subchapter C. Royalty Crude Oil

§925. Purpose

A. It is the purpose of these regulations, and in the best interest of the state, to establish a program to provide a mechanism for taking state royalty oil volumes in kind and for the disposition by sales or processing contracts, in a fair and equitable manner, of available supplies of such state royalty oil to eligible refiners within the state, with the intent thereby to increase the supplies of gasoline, diesel or other fuel products available to Louisiana citizens.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980).

§927. Definitions

Affiliates any business concerns affiliated with each other where either directly or indirectly one concern controls or has the power to control the other or a third party controls or has the power to control both.

Contract a contract for the disposition of state royalty oil.

Lessee the owner or owners of the working interest under a state lease.

Lessor the state of Louisiana acting through the State Mineral Board.

Louisiana Refiner an applicant who is certified by the Mineral Board.

Refiner a qualified applicant who contracts for state royalty oil pursuant to the policies and procedures established by the State Mineral Board and these regulations.

Royalty Oil the state's royalty portion of crude oil or condensate produced from or allocated to state leases.

Seller the State Mineral Board acting on behalf of the state of Louisiana in a contract to sell royalty oil.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980).

§929. Policies and Procedures of the State Mineral Board

A. Royalty oil available through exercise of the state's right to take in kind shall be disposed of pursuant to policies and procedures approved by the State Mineral Board, which shall be consistent with the intent and purpose of R.S. 30:143 and these regulations.

B. Prior to the execution of any contracts by the State Mineral Board, and pending a determination of available supplies, the Office of Mineral Resources, under the direction of the secretary of the Department of Natural Resources, shall prepare for board consideration

recommendations for the disposition of available state royalty oil. Such recommendations shall address the sale and accounting of price-controlled royalty oil; processing and accounting for price-controlled royalty oil; and public bidding and accounting for decontrolled royalty oil.

C. With the advice and cooperation of the Office of Conservation, Division of Fuel Allocation, the Office of Mineral Resources shall prepare for board consideration recommended procedures for exercising the state's right of first refusal to any products refined from state royalty oil and for making such products available to in-state purchasers thereby, as well as in the usual course of sale of such products.

D. The Office of Mineral Resources shall prepare a projection of the costs of administering the program as well as a recommendation to the board of the amount of administrative fee, not to exceed $0.20 per barrel, necessary to cover such costs, and if applicable, the minimum volume of royalty oil which must be included in each type of transaction to be cost efficient.

E. In accomplishing the purposes of the Section, the Office of Mineral Resources shall be authorized to consult with such industry, government and professional persons as may be necessary. Within the limitations of its budget, or utilizing funds made available for that purpose, the office may contact for any professional services necessary, subject to the approval of the secretary of the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:133 (March 1980).

§931. Inventory, Delivery Points, Objections

A. For each lease, division order or other legal instrument pursuant to the terms of which the state has a royalty oil interest susceptible of taking in kind, the Office of Mineral Resources shall determine the volumes and regulated prices applicable to such royalty. Royalty volumes not subject to price controls shall be identified separately.

B. The Office of Mineral Resources shall notify each of the state's lessees of the state's interest in taking in kind the volume of state royalty oil attributable to the production of each such lessee, requesting the designation, within 30 days, of proposed delivery points therefore, and notice of any perceived impediments, objections or hardships with regard to such taking under a particular lease or other legal instrument.

C. Impediments or objections which cannot be resolved within 60 days of notice, by informal conference with the State Mineral Board, shall be referred to the secretary of the Department of Natural Resources for his review and disposition by such procedures as he may deem appropriate and in the best interest of the state.

D. The lease volumes, prices and proposed delivery points for all state royalty oil for which there is no unresolved impediment or objection to taking in kind, shall be compiled by the Office of Mineral Resources for submission to the State Mineral Board. Lease volumes not subject to price controls shall be separately identified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:134 (March 1980).

§933. Louisiana Refiner Criteria

A. To be eligible to purchase or process state royalty crude oil an applicant therefore must be certified by the State Mineral Board as a Louisiana refiner.

B. To qualify as a Louisiana refiner, an applicant to purchase or process state royalty crude shall meet all of the following criteria.

1. Applicant shall be a Louisiana business entity having its principal place of business in the state of Louisiana. In applying this criterium, principal place of business shall mean:

a. 51 percent of the applicant's and all affiliates' total refining capacity is located in Louisiana; or

b. Louisiana is the applicant's state of incorporation; or

c. applicant's headquarters or corporate offices and at least 51 percent of its officers and employees are located in Louisiana.

2. Applicant shall have facilities in the state with available capacity for refining or processing crude oil or condensate into fuel products and/or the capability for the distillation of methanol or ethanol suitable for blending with gasoline to produce a motor fuel.

3. Applicant must have adequate facilities to receive crude oil and own or have contractual rights to use facilities for the storage of royalty crude oil and for storage or products refined therefrom.

4. Applicant must be able to:

a. legally condition the sale of products refined from the state royalty oil upon the right of the state to exercise a right of first refusal to any such products; and

b. to give first priority to Louisiana customers in the usual course of sale of such products.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:134 (March 1980).

§935. Application Requirements

A. A refiner desiring to purchase or process state royalty oil shall file an application with the Office of Mineral Resources with an original and 10 copies containing the following information:

1. the full name and address of the applicant;

2. a detailed statement showing the applicant's qualifications to be certified a Louisiana refiner pursuant to §933 of these regulations, attested to by affidavit;

3. the capacity of the refinery to be supplied;

4. a tabulation for each of the last 12 months of operation, or since start-up date if less than 12 months, or projection for the next 12 months, of refining capability, of the amount of the thru-put capacity, the source and grades of crude oil refined or refinable, and the kind, amount and percentage of the principle fuel products produced;

5. if applicable, the amount and source of methanol and ethanol production available to applicant including identification of the sources of agricultural products used to produce such methanol and ethanol;

6. a plan of procedure setting forth in detail the mechanisms proposed to be employed to dispose of refined products in the state and to accommodate the state in the event that it exercises its rights of first refusal, together with any approvals from the federal government which may be necessary to carry out such disposition;

7. a complete disclosure of applicant's affiliation, and the nature thereof, with any other producer and refiner;

8. the minimum amount of royalty oil requested and the state lease or leases applicant believes offer a potential source of royalty oil, if known;

9. a list of all customers to whom products were sold in 1979 and all customers required to be supplied pursuant to federal law or regulations, including such customer's address and type of products purchased;

10. a contingency plan for handling of the state's royalty crude in the event that a force majeure event occurs disrupting normal operations;

11. such other information as the State Mineral Board may by appropriate notice require for such applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:134 (March 1980).

§937. Disposition; Approval; Priority

A. Royalty crude shall normally be made available to qualified applicants based upon each qualified applicant receiving an equal proportionate share of the total royalty crude oil available. The State Mineral Board may establish policies and procedures for alternate methods of disposition of royalty crude not otherwise subject to public bid, and for public bidding for royalty crude not subject to price controls when the board deems such alternate methods are appropriate. In either case the board may establish such conditions as it deems necessary, in addition to the conditions set forth in these regulations, to protect the interests of the state and to provide, to the extent practicable, for fair and equitable allocation.

B. Prior to implementing procedures for public bidding, and prior to disposing of royalty crude by a contract, for the sale or processing thereof, the board shall present such procedures, and each such contract, to the House and Senate Committees on Natural Resources, meeting jointly, for approval thereof.

C. The board shall incorporate in its policies and procedures mechanisms which give first priority to eligible refiners with capability to refine typical south Louisiana, light sweet type crude and refiners with operable facilities for the distillation of methanol or ethanol suitable for blending with gasoline to produce a motor fuel. The board shall develop procedures for ranking refiners with facilities for the distillation of methanol or ethanol according to the percentage of Louisiana agricultural products used in such refiners' distillation process, with those refiners deriving ethanol or methanol by using 50 percent or more of Louisiana agricultural products ranked first. Refiners using less than 10 percent Louisiana agricultural products shall not be entitled to ranking in this first priority.

D. No refiner shall be entitled to receive more than 7,500 barrels per day of state royalty crude.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:134 (March 1980).

§939. Contract Term; Renewal; Minimum Requirements

A. The term of any contract entered into by the board with a qualified refiner for the purchase or processing of state royalty crude oil shall have a maximum primary term of no more than three years. Such contract shall be renewable upon timely application on the same conditions, or such additional conditions as may be deemed necessary to serve the best interest of the state, at the sole discretion of the board.

B. Intention of the refiner to seek renewal of a contract shall be evidenced by written application filed no later than 60 days prior to the expiration date of the contract then in effect.

C. If the board does not receive written application for renewal within the time set forth in Subsection B, the board may readvertise the availability of the volume of royalty crude oil committed under such contract and enter into a new contract with a qualified refiner effective upon the expiration date of the unrenewed contract, or make such other disposition of the royalty oil as it determines to be in the best interest of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980).

§941. Transportation; Delivery; Storage; Transportation Costs; Minimum Requirements

A. In any contract, the refiner shall be responsible to arrange with the state's lessee for the delivery and receipt of all royalty oil.

B. The point of delivery for royalty oil under any contract shall be the field where produced or a site as near as possible to the point of delivery normally utilized by the state's lessee for delivery of crude oil when state's royalty share is not taken in kind.

C. The refiner shall promptly reimburse state's lessee for the cost of transporting crude oil to the point of delivery at the rate set by the applicable state lease for deductions from royalties for the costs of transportation. If no such rate for deductions is set by the applicable state lease, the refiner shall reimburse the lessee at a rate to be approved by the State Mineral Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980).

§943. Price; Deductions; Method of Payment; Reports; Taxes; Administration Fee

A. The price to be paid by a refiner pursuant to any contract for the purchase of royalty crude oil shall be the maximum price allowed pursuant to the applicable and controlling federal or state law on the effective date of the contract. In the event that such price controls are terminated during the term of a contract, the price to be paid by a refiner shall be the fair market value of the state's royalty oil, which condition shall be effective at any time while the contract is in effect.

B. In calculating the payments for royalty crude oil purchased, the refiner may deduct from the price that portion of the transportation costs reimbursed to the state's lessee which represents the actual cost of transportation to the agreed upon point of delivery utilized. Any additional cost of transportation for delivery to a more distant point shall be borne solely by the refiner.

C. Payments due under any contract shall be made monthly, such payments to be consistent with the volume of royalty oil received by the refiner during such preceding month.

D. The refiner shall be required to file monthly reports with the Office of Mineral Resources setting forth by lease and delivery point all volumes of crude oil received.

E. The state shall assume responsibility for all severance taxes due on its royalty production in effect on the contract date. The refiner shall be liable for all other taxes and any additional or increased taxes which become effective following the date of the contract. The board may require the refiner to advance or remit to the appropriate state lessee all severance taxes paid by such lessee which are attributable to the volume of royalty oil acquired by the refiner. In such event the refiner shall be entitled to deduct such taxes on a monthly basis from payments due the state and remit same to the appropriate state lessee.

F. In addition to all other prices, fees, and charges otherwise authorized in these regulations, the board may assess a fee not in excess of $0.20 per barrel of royalty oil delivered to cover the cost of administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980).

§945. Utilization; Right of First Refusal; Assignment; Resale

A. Refiner shall not resell any royalty crude oil without the prior written consent of the Mineral Board.

B. All royalty crude oil sold or processed under any contract, or other crude oil received in lieu of royalty crude oil under an exchange agreement, shall be utilized at refiner's facilities in the state and shall not be used for resale in kind except as authorized by the provisions of this Section. To the extent permitted by controlling federal law or regulations no gasoline or diesel end product refined from state royalty crude under any contract shall be sold for the ultimate purpose of retail sale outside of the state of Louisiana.

C. The resale or exchange of royalty crude oil in violation of the provisions of this Section shall be punishable by a fine of not less than $10,000 per day for each day of violation.

D. Any contract for the sale or processing of state royalty oil shall be conditioned upon the right of the state to exercise a right of first refusal to any product refined from the royalty crude.

E. Any contract for the sale or processing of state royalty oil shall also require that first priority be given to Louisiana customers in the usual course of sale of end products.

F. Refiner shall be required to furnish the board copies of all contracts entered into between refiner and third parties reflecting delivery, receipt, handling, transporting, sale and use of crude oil covered by a contract with the board, or refined products derived therefrom.

G. No contract shall be assignable without the prior written consent of the board.

H. Refiner shall not enter into any exchange agreement whereby other crude oil in lieu of the state's royalty crude oil is delivered to refiner without the prior written consent of the Mineral Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980).

§947. Penalties; Liability; Bond

A. The board shall provide for the assessment of a late charge at the rate of 7 percent per annum on any payments received from the refiner after the date such payments are due as otherwise provided in these regulations.

B. In any contract for the disposition of royalty crude oil the board shall assure that the state is held free and harmless from any liability, cost or expense arising from the execution of such contract or from the delivery of any crude oil pursuant thereto. The refiner shall assume all liability for the actions of itself, its agents and employees, and of the state's lessee, its agent and employees in receiving delivery, handling, transporting and refining of royalty oil.

C. Prior to the disposition of any royalty crude oil as provided herein the board shall require each refiner to furnish to the state a letter of credit from an established and recognized bank within the state, or an acceptable surety bond, in an amount equal to the price and administrative fee for 45 days volume of crude oil to be delivered under any contract, or $500,000, whichever amount is less, guaranteeing good and faithful performance of the terms and conditions of these regulations and any contract. The full amount of such letter of credit or bond, or any portion thereof, may be applied to any sums or damages due the state as a result of the breach of any condition of the contract or violation of these regulations. Such right shall be in addition to any other legal rights and remedies available to the state. The board shall reserve the right to require the increase in the amount of this security when necessary to protect the interest of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:135 (March 1980).

§949. Warranties; Governmental Regulations

A. In any contract the board shall not warrant the crude oil delivered as being merchantable or suitable for refiner's purpose and the board shall not be liable for the quality of the crude oil or the content thereof. The board shall not warrant to refiner that there are available sufficient quantities of royalty crude oil from any state lease(s) dedicated to a contract to meet refiner's requirements.

B. All contracts shall be subject to applicable state, local and federal laws, rules and regulations. Refiner shall be required to secure all licenses, permits, orders, or waivers necessary for the performance of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:136 (March 1980).

§951. Additional Procedural Rules

A. The board may from time to time adopt such additional policies and rules of procedures as are deemed necessary to fully effectuate and administer the regulations set forth herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:143.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:136 (March 1980).

Chapter 13. Bohemia Spillways

§1301. Definitions

A. As used in these rules and regulations, the words and phrases defined shall have the following meanings.

Applicant a person submitting an application to the department and claiming to be:

a. the original owner of the property on the date of its expropriation by or sale under threat of expropriation to the Orleans Levee Board; or

b. the original owner's lawful heir, or legatee or their duly constituted succession representative. If the original owner was a corporation or association (other than a partnership or limited partnership or partnership in commendam) which has been merged or consolidated into another such corporation or association, *applicant* shall mean the corporation or association into which the owner has been merged. If the owner was a partnership or limited partnership or partnership in commendam which has changed its composition subsequent to the date of expropriation by or sale to the Orleans Levee Board, *applicant* shall mean those persons, firms or corporations who were partners on the said date. If individual partners are no longer living, *applicant* shall mean those surviving persons, firms or corporations who were partners on the said date, together with the succession representative of such partners who are deceased. The submission of an application creates no presumption as to the validity of the claims of ownership or heirship contained therein.

Application that form furnished by the department to be completed and returned by the applicant, together with any attachments, pursuant to these rules.

Board the Board of Levee Commissioners of the Orleans Levee District.

Department the Department of Natural Resources of the state of Louisiana, the secretary thereof or his designee.

Property the individual tracts of private property expropriated or purchased under threat of expropriation by the board, pursuant to Act 99 of the 1924 Regular Session of the Legislature, for purposes of establishing the Bohemia Spillway, located on the east bank of the Mississippi River in Plaquemines Parish. *Property* shall include the acreage, arpents or quantity in measurements existing at the time of acquisition by the board except to the extent that the tract has been reduced by erosion or augmented by riverine accretion.

AUTHORITY NOTE: Promulgated in accordance with Act 233 of 1984.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources. Office of the Secretary, LR 11:40 (January 1985).

§1303. Notification, Application Forms

A. The department shall cause a notice to be published every third day for a period of 30 days in the *New Orleans Times Picayune*. Notice shall also be published once a week for four successive weeks in the *Plaquemines Gazette*, the official journal of Plaquemines Parish. The notice shall be entitled "Notice of Return of Bohemia Spillway Lands, Plaquemines Parish," and shall contain the following information.

1. A statement that Act 233 of the 1984 Louisiana Legislature directed the return of land expropriated or purchased under the threat of expropriation for the construction of the Bohemia Spillway to its former owners or their successors.

2. Persons claiming ownership pursuant to Act 233 of 1984 can obtain an application form and a copy of existing rules for the return of the land by sending a written request to the department, or its designee, at the address and place specified in the notice.

3. No application for return of the land or property will by accepted after 180 days from the date of final publication of the notice.

4. Copies of the list of original owners of the property and other information will be available for public inspection and review at the Plaquemines Parish Library locations in Buras and Belle Chasse, the Plaquemines Parish Court House, the board's office, and any other public building specified in the notice.

B. The department shall prepare and have available for distribution, application forms and appropriate attachments for individuals and for corporations, partnerships or associations seeking ownership of property, pursuant to Act 233 of 1984. Within 10 days of receipt of a request for an application, the department shall forward the appropriate form and any attachments to the requestor, together with a copy of the existing regulations adopted pursuant to Act 233 of 1984. The department will only consider and process apparently complete applications received on or before the one hundred eightieth day from the date of final publication of the notice, as specified hereinabove.

C. Prior to the first publication of notice, hereunder, the department, or the board upon direction of the secretary, shall provide the Plaquemines Parish Libraries and Clerk of Court's Office and any other custodian of a public building specified by the secretary, three copies, each, of the list of original owners of property on the date of acquisition by the board, and such other information as required by the department. Said lists and information shall be available for public review and inspection at the sites specified herein and board's offices, during regular business hours, from the date of first publication of notice, until 180 days after the last publication of notice.

AUTHORITY NOTE: Promulgated in accordance with Act 233 of 1984.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 11:40 (January 1985).

§1305. Application Processing and Certification

A. Upon termination of the period for receiving applications, the department shall conduct a preliminary review of each application to determine whether substantive processing of each application can be initiated. In reviewing the applications, the following criteria must be satisfied:

1. whether all questions on the application are answered, and/or appropriate documentation has been furnished;

2. whether the application identifies land acquired by the board and located within the Bohemia Spillway, as that designation is used in Act 233 of the 1984 Regular Session of the Legislature;

3. whether the name of the person identified on the application form as original owner is among the names of owners included on the Report-Real Estate Committee to Executive Committee, Board of Levee Commissioners Orleans Levee District Proposed Plaquemines Outlet, dated April 20, 1925; the original being on file at the administrative office of the Orleans Levee Board, Lakefront Airport, New Orleans, Louisiana, or the name of the person identified on the application form as original owner appears on other records of the board pertaining to acquisition of property in the Bohemia Spillway.

B.1. Upon completion of the preliminary review, the department shall notify all applicants of the results of the review, and the requirement for an advance costs deposit. The written notification, with postmark date of mailing affixed by the department's postage meter, shall either state that the claim is being retained for further processing, or that it failed to satisfy one or more of the three criteria listed above. Applicants shall retain the envelope in which the notification is delivered by the U.S. Postal Service, and the notification shall include instructions on this point. The outside of the envelope shall bear instructions in boldface, "RETAIN THIS ENVELOPE." In the event of failure to satisfy one or more of the criteria, the claim shall be returned to the applicant. Applicants filing rejected claims shall have 70 days from the postmark date affixed by the department's postage meter to file an amended claim and necessary supporting documents with the department. Amended claims filed more than the 70 days specified herein shall be invalid and no further processing by the department will be done. Documents attached to applications will be returned to applicant upon payment of photocopy and postage costs.

2. Prior to consideration of any claim beyond the preliminary review set forth above, an advance costs deposit in the amount of $175 per claim shall be collected by the secretary. Failure by any applicant to deposit the full advance costs within 70 days of notification shall invalidate the claim upon which the deposit was due. The advance costs deposit shall be held by the secretary and be used to pay the costs of administering the claim. The actual costs shall be assessed by the secretary as hereinafter set forth. Additional advance costs may be required on a case-by-case basis, and no claim shall be processed without sufficient funds on deposit.

3.a. The secretary shall designate that the special master review the applications of applicants whose claims have a substantial likelihood of acquiring ownership in a tract of land in the Bohemia Spillway area and who have requested that they be declared indigent. The following applicants may file for indigent status:

i. applicants who have received notification that their application is being retained for further processing; and

ii. applicants whose applications have been rejected and who file amended claims.

b. No other applicants will be considered for indigent status. Applicants in both groups a and b must request in writing for indigent status. Said requests for indigent status must be received by the secretary within 30 calendar days of the effective date of these rules or 30 calendar days of the post-marked date of the notification in Paragraph B.1, whichever is later. Upon receipt of a request for indigent status the secretary shall provide a questionnaire and three affidavits, requesting information that poverty and lack of means render the applicant unable to furnish an advance costs deposit. The completed questionnaire and executed affidavits, and if applicable, the amended claim, must be received by the secretary within 70 calendar days of the effective date of these rules or 70 calendar days of the postmarked date of the notification in Paragraph B.1, whichever is later. Upon receipt of an amended claim along with the completed questionnaire and affidavits the special master will review each amended claim, pursuant to the criteria in Subsection A above, and only those applicants whose claims are determined to have a substantial likelihood of acquiring ownership in a tract of land in the Bohemia Spillway area will be reviewed for indigent status. Based upon the information provided in the questionnaire and the facts alleged in the affidavits, the special master may grant or deny the request for indigent status. An applicant whose request for indigent status has been reviewed and denied must submit the advance costs deposit within 30 calendar days of the postmarked date of notification of the denial and/or may seek judicial review by filing suit in the Twenty-fifth Judicial District Court within 30 days of the postmarked date of notification of the denial of indigent status by the department. Applicants shall retain the envelope in which the notification of denial of indigent status or notification of rejection of the amended claim is delivered by the U.S. Postal Service, and the notification shall include instructions on this point. The outside of the envelope shall bear instructions in boldface, "KEEP THIS ENVELOPE." Those applicants filing an amended claim along with a request for indigent status whose amended claim is rejected and who wish to proceed with processing their claim will have 30 calendar days from the postmarked date of the notification of the rejection to submit the advance costs deposit. Those persons who received notification of the preliminary review pursuant to Paragraph B.1 above, prior to the effective date of these rules and who do not file for indigent status shall have 70 calendar days from the effective date of these rules to submit the advance costs deposit. If an amended claim is filed, it must be filed with the necessary supporting documentation together with the advanced costs deposit within 70 calendar days of the effective date of these rules. Failure of an applicant to comply with any time period listed herein will void such claim.

C. During the preliminary review phase of application processing, the department shall concurrently evaluate the tracts of land described in the April 20, 1925 Report-Real Estate Committee to Executive Committee, Board of Levee Commissioners, Orleans Levee District, (identified in Paragraph A.3, above) to identify any lands and/or water bottoms which are located in the Bohemia Spillway and are or may be owned by the state of Louisiana, and to determine the extent of any such state ownership.

D. The Secretary of the Department of Natural Resources shall designate a special master, who shall undertake the substantive evaluation of valid applications. The substantive evaluation of each application shall be based upon such information as is contained in the application, and generated pursuant to §1305.B and C, and any additional evidence the special master might require the applicant, the board or the department to furnish. Any request for additional evidence shall be satisfied in writing, within 70 days of written demand by the special master, as established by the postmarked date of mailing affixed by the department's postage meter. Applicants shall retain the envelope in which the notification is delivered by the U.S. Postal Service, and the notification shall include instructions on this point. The outside of the envelope shall bear instructions in boldface, "RETAIN THIS ENVELOPE." Applicants failing to timely and adequately respond either to any request of the special master or the department, or pay the advance costs deposit shall have their applications invalidated, unless good cause is shown why the request was not timely or adequately responded to.

E. Upon completion of the evaluation of an application, the special master shall make one of the following determinations in writing:

1. the application does not establish an apparent valid claim for return of title to the tract indicated on the application;

2. the application establishes an apparent valid claim for return of title to the tract indicated on the application;

3. the application, and accompanying documentary evidence, establishes an apparent valid claim for return of title to the tract; however, there are heirs who remain unknown and/or unaccounted for;

4. the application is invalid for reasons set forth above, or otherwise.

F. The appropriate written determination, made pursuant to Subsection E above, shall be attached to the application. The application and all accompanying documentary evidence shall be certified by the special master, and shall be transmitted to the board for disposition pursuant to Section 4 of Act 819 of the 1985 Regular Session of the Louisiana Legislature.

G.1. Preceding transmittal of the documents to the board described in Subsection F above, the special master shall assess each application for the actual cost of administering the claim. In those instances where the amount paid to the secretary as an advance costs deposit exceeds the full cost of reviewing and administering the claim, the balance of the deposit shall be returned to the applicant who paid it. In those instances where the full cost of reviewing and administering the claim shall exceed the advance costs deposit, the difference shall be paid by the applicant and received by the secretary prior to document transmittal.

2. The secretary shall give said applicant 30 days in which to make payment. Failure of the applicant to make payment within that 30-day period shall void said claim, except applicants granted indigent status shall not be required to pay costs preceding transmittal of the documents described in Subsection F above. However, successful indigent applicants shall remain liable for payment of the full cost of reviewing and administering their claims, and the cost shall be due and payable prior to the land transfers to successful applicants. The cost shall be paid by one or more of the parties to the claim, or may be apportioned by the secretary among all the applicants for an individual tract of property located within the Bohemia Spillway.

AUTHORITY NOTE: Promulgated in accordance with Act 644 of 1987, Act 233 of 1984 and Act 819 of 1985.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 11:40 (January 1985), amended LR 13:583 (October 1987), LR 14:799 (November 1988), LR 16:414 (May 1990).

Chapter 15. Administration of the Fisherman's Gear Compensation Fund

§1501. Definitions

A. As used in these regulations the following terms and phrases shall have the definition ascribed to them.

Claimant any vessel owner who files a claim under the provisions of these regulations and R.S. 56:700.1-700.5.

Commercial Fisherman any citizen of the state of Louisiana who possesses a valid Louisiana residential commercial fishing license and who derives a primary source of his or her income from the harvesting of living marine resources for commercial purposes.

Department the Louisiana Department of Natural Resources and Regulatory Authority means the secretary thereof and the personnel appointed or employed thereby who administer the commercial fishermen's gear compensation fund.

Fishing Gear any licensed marine vessel and any equipment, whether or not attached to a vessel, in which are used in the handling or harvesting of commercial marine resources.

Fund the Fisherman's Gear Compensation Fund.

Hearing Examiner the person(s) employed or appointed by the regulatory authority to conduct hearings, take oral and written testimony from claimants and other witnesses, and make recommendations to the regulatory authority on the validity and payment of claims.

Obstruction any object, obstacle, equipment or device located in state water within the geographical boundary of the fund whether natural or man made; provided that this definition shall not be applied to obstructions floating on the surface which could be avoided by a reasonably prudent fisherman.

Primary Source of Income that source of revenue earned by a claimant from commercial fishing endeavors which is deemed by the regulatory authority to constitute a fundamental source of such claimant's annual earned income. Annual earned income shall be income earned from all sources reportable on state and federal income tax returns. Any claimant who presents satisfactory proof that at least 50 percent of his or her annual income in the year preceding the year of the claim was earned from commercial fishing endeavors shall be deemed to derive a primary source of his or her income therefrom.

Satisfactory Proof as it relates to demonstrating a primary source of income a certified copy of state and federal income tax returns together with related financial data. In the case of a claimant being a corporation, a certified copy of the state and federal corporate tax return shall be submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 14:545 (August 1988), LR 21:956 (September 1995).

§1503. Geographic Boundary of Fund

A. The Fishermen's Gear Compensation Fund shall be limited to the payment of no more than two claims for damage or loss of fishing gear filed by qualified claimants during a fiscal year applicable to the department (July 1-June 30). Claims must be received by the fund within the period indicated. A single claim may not exceed $5,000, but in no event shall any payment of a claim exceed the amount of gross income earned by the claimant from fishing endeavors in the year preceding the claim, and shall be based on damage or loss of fishing gear due to an encounter with an obstruction in state waters located below the northern boundary of the Louisiana Coastal Zone as set forth in R.S. 49:213.4, and depicted on official maps of the sate regulatory authority having jurisdiction over coastal zone management, and extending seaward to the limits of Louisiana's territorial jurisdiction.

B. No claim shall be accepted or paid for damages or loss sustained from an encounter with an obstruction which occurs in waters overlying the federal domain of the outer continental shelf or north of the northern boundary of the Louisiana Coastal Zone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 11:29 (January 1987), LR 21:956 (September 1995).

§1505. Claim Filing Procedure—Initial Reports

A.1. Within 30 days of encountering an obstruction in state waters covered by the fund, from which damage or loss to fishing gear is sustained and for which a written claim will be made for reimbursement from the fund, as otherwise provided in §1509 of these regulations, the commercial fisherman encountering the obstruction shall notify the regulatory authority, orally or in writing, and provide the following information:

a. claimant's name, address and telephone number;

b. the name and registration number of the commercial fishing vessel involved;

c. the Louisiana residential commercial fishing license number of the claimant;

d. the location of the vessel and obstruction at the time of encounter by one of the methods described in §1507 of these regulations whenever possible;

e. the date and time of day that the obstruction was encountered;

f. identification of the nature of the obstruction; and

g. a description of the nature of the damage or loss sustained for which a written claim will be made and the estimated amount, in dollars, of the damage or loss, if known.

2. The requirements of the initial notice may be waived in whole or in part by the regulatory authority for good cause shown.

B. Upon receipt of the information required by Subsection A above, the regulatory authority shall establish a file in the name of the commercial fisherman, containing all of the information above. On a map showing all state waters covered by the fund, the regulatory authority shall indicate the location or approximate location of the obstruction, physically and by coordinates, if available.

C. Pending receipt of the written claim, as otherwise required herein, the regulatory authority shall attempt to ascertain the lessees or grantees of rights of state water bottoms proximate to the location of the obstruction on which the obstruction was encountered and furnish their names to the claimant.

D. The regulatory authority may devise procedures for informing commercial fishermen of the location of all obstructions reported. Such procedures may include periodic dissemination of maps containing such information; the placement of buoys or markers at the site of such obstruction; or such other means as the regulatory authority deems reasonable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980).

§1507. Identification of Area of Obstruction

A. When an obstruction has been encountered by a qualified commercial fisherman from which encounter a claim for damages to the fund is made, the claim shall not be accepted unless accompanied by sufficient information by which to locate the area of the obstruction. Such information shall be conveyed on forms furnished by the department when available, or otherwise in a manner sufficiently clear to be usable by the department in charting the obstruction.

1. No future claim shall be filed by a qualified commercial fisherman for an encounter with an obstruction at the same location reported by the fisherman on a previous claim.

B. The information referred to in Subsection A of this Section shall include all of the information set forth in this Subsection to the extent possible. Where such information cannot be furnished, reasons for such inability shall be stated instead:

1. common name of the body of water in which the obstruction was encountered;

2. name of the parish in which the obstruction was encountered;

3. the date and time of day when the obstruction was encountered;

4. the depth of the water and the depth at which fishing gear was deployed at the point of encounter;

5. the position of the fishing vessel and the position of the obstruction at the point of encounter, to be specified by using one or more of the following methods of position fixing, using the most reliable method available aboard the vessel at the time of encounter:

a. Loran-C Readings. Provide time delay readings from at least two Loran-C pairs (e.g., 7980-W and 7980-Y). Readings from additional pairs should be provided if available from a particular Loran-C receiver installed. If a coordinate converter is being used, the latitude and longitude readings may be furnished;

b. distance (range) and direction (bearing) to fixed offshore objects such as lighthouses, light towers, and oil drilling or production platforms. Specify the name of each such object used;

c. distance and direction of fixed aids to navigation and land marks, which are identified on National Ocean Survey Charts, such as radio towers, jetty lights, etc.;

d. distance and direction to prominent landmarks which are not identified on National Ocean Survey charts but are readily identifiable for future reference;

e. Loran-A Readings. Provide time delayed readings from at least two Loran-A rates. Readings from additional rates should be provided if available. Identify any skywave time delay reading as such;

f. direction to radio beacons using a radio direction finder. Give each station's identifying call letters. Provide a copy of the radio direction finder deviation table if prepared for the fishing vessel;

g. distance and direction to floating navigational aids such as buoys. Identify any buoy by name, number, color, type and lightlist number if known;

h. alternate navigation methods may be used if they are available. These include Raydist, Decca, and similar electronic navigation systems that may be in use;

i. a celestial fix or line of sight may be used if no other navigation method is available. All calculations used shall accompany this method.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 21:956 (September 1995).

§1509. Claims—General Form and Content

A. Claims shall be by affidavit, signed by the claimant on forms furnished by the department when available and shall contain, in addition to the requirements of §1507 herein, the following information:

1. the name, mailing address, telephone number, citizenship, and occupation of the claimant;

2. the name, address, and telephone number of each person representing the claimant in pursuing the claim;

3. the name of the fishing vessel involved, its type, size, homeport and, its U.S. Coast Guard documentation number and/or state registration number;

4. a statement of the type of fishing operation being conducted and a description of how the encounter occurred;

5. if an amount is claimed, the claim shall include:

a. the nature and extent of the damage and loss suffered; photographs of vessel damage which must show the claimed damage and the registration/documentation number and/or name of the vessel; a description of the gear involved and where pertinent, a list of components such as size, type, grade, etc.;

b. the amount claimed together with proof of ownership of the gear which was damaged or lost on the obstruction. Proof of ownership must include paid receipts together with proof of payment such as copies of money orders or bank cashier's checks for the gear. No receipts paid by "cash" will be accepted for gear purchased after the effective date of this rule;

c. the date, place and cost of acquisition of the gear damaged or lost;

d. an estimate from a commercial fishing gear repair or supply company, of the present replacement cost of the fishing gear and the repair cost of the fishing gear (if it is repairable). If fishing gear of the type damaged is usually made or repaired by the claimant, an estimate from a commercial fishing gear repair or supply company for the materials required to make the gear together with a notarized statement from the claimant that he or she makes his or her own gear may be used;

e. if the fishing gear is repaired or replaced before an award is made under this Part a copy of the invoice or receipt for the repair or replacement of the fishing gear; and the estimated salvage value of the fishing gear that is not repairable;

6. a detailed statement of the efforts made by claimant to identify, locate and collect damages for his loss from the person financially responsible therefor accompanied by copies of all correspondence related thereto;

7. a claim shall be deemed invalid if the claimant cannot, for any reason, produce the documentation required by this Section.

B. Written claims required by this Section shall be filed by claimant on or before 60 days from the due date of the initial report of damage or loss required by §1505 of these regulations.

C. The regulatory authority shall include the information received pursuant to this Section in the file established for the claimant. If the claimant's file is deemed to be incomplete or otherwise to contain insufficient information for proper disposition of the claim, the claimant shall be notified in writing within five days of such determination, and the additional information needed shall be requested. No claim shall be processed, nor funds paid, until the regulatory authority has received all information necessary to a proper disposition thereof.

D. Damages or losses which are covered by valid insurance or the federal Fishermen's Contingency Fund (50 CFR Part 296) shall not be reimbursable from the fund. No claimant shall include within a claim submitted any amounts for which such claimant has received or is entitled to receive reimbursement under an insurance policy or the federal program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 21:957 (September 1995).

§1511. Hearing Examiner; Small Claims; Adjudicatory Hearings

A. Upon acceptance by the regulatory authority of a claim as complete, and upon determination that all other reporting requirements in these regulations have been timely complied with by the claimant, the regulatory authority shall make disposition of the claim pursuant to the appropriate procedures as set forth below.

1. It may employ the services of experts or consultants in evaluating damage or loss whose sworn written or oral opinions or appraisals shall be made a part of the claimant's file or records as the case may be.

2. It may designate a hearing examiner to conduct the hearing.

3. It shall assign all claims for public hearing in compliance with the Louisiana Administrative Procedure Act, R.S. 49:951 et seq., and the general rules and regulations of the Department of Natural Resources, and especially with respect to notice and to the date on which objections to a claim must be presented in written form.

4. If no written objections to a claim are timely made:

a. the regulatory authority may make a preliminary evaluation of the claim or loss and if it does not exceed the sum of $500 and all essential requirements of these regulations are otherwise met by the claimant, it shall give notice of its intent to pay the claim in the manner as provided in Subsection F hereof. This notice may be combined with the notice of public hearing concerning it. If no objection is made to the payment of the claim at the public hearing, the regulatory authority may reimburse the claimant without further administrative delay;

b. at all hearings other than those provided for by Subparagraph 4.a:

i. the claimant must offer proof as to:

(a). his freedom from contributory negligence in causing his loss; and

(b). his good faith efforts to locate the financially responsible party to whom the obstruction, equipment, materials, structures or other items causing the claimed damage is attributable;

ii. on all other issues the regulatory authority may restrict the hearing to the introduction of evidence, proof, or testimony as to the ownership or location of the obstruction, the qualification of the claimant, the dollar value of the damage or loss or any other necessary information or facts not satisfactorily identified in the initial or full claim reports submitted. It shall notify the claimant of such restrictions and at the public hearing, claimant shall not be required to offer proof on matters other than those so restricted and those required by Clause 4.b.i above;

c. any person who has not made timely objection shall nevertheless be given an opportunity to be heard. The claimant need not, though he may, present further proof in support of his claim other than that required by Clause 4.b.i.

5. If written objections to a claim are timely made, the hearing shall be considered as an adjudicatory proceeding within the meaning of the Louisiana Administrative Procedure Act and the general rules and regulations of the Department of Natural Resources, and shall be conducted as such with full opportunity for responses, objections and other rights accorded by that Act and the regulations.

B. Monies from the fund shall be used to reimburse a claimant only for the cost of repair or replacement of fishing gear as to which damage or loss has been sustained under the scope of these regulations, and only to a maximum amount of $5,000 for each encounter with an obstruction or for each incident.

C. No reimbursement from the fund shall be made to any claimant where satisfactory evidence indicates that negligence of the claimant contributed to the damage or loss. If the regulatory authority determines that a claim arises from hitting or snagging an obstruction previously encountered by the claimant, a rebuttable presumption that the claimant is contributorily negligent must be overcome by him.

D. Any person aggrieved by a ruling or claim disposition made by the regulatory authority, a recommendation of the hearing examiner or other administrative action taken pursuant to these regulations or R.S. 56:700.1-700.5, shall have the right to request a rehearing, or to file an appeal with a court of proper jurisdiction.

E. The regulatory authority may establish written policies and procedures for the conduct of the adjudicatory hearings, the style and content of forms, or other administrative functions not inconsistent with the Louisiana Administrative Procedure Act. Such policies and procedures shall not be subject to notice and promulgation and rules or regulations, but shall be written and shall be made available to any interested person.

F. The regulatory authority shall publish in the *Louisiana Register* a monthly report of the number and total dollar amount of the claims filed, the number of claims denied, the number of claims paid and the total dollar amount of the claims paid, and the Loran C coordinate locations of each claim for which it is available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 16:416 (May 1990).

§1513. Penalties

A. The intentional rendering of a financial statement of account, which is known to be false, by anyone who is obliged to render an accounting pursuant to R.S. 56:700.1-700.5, or these regulations, shall be punishable pursuant to the provision of the Louisiana Criminal Code R.S. 17:70, False Accounting.

B. The filing or depositing, with knowledge or falsity, of any forged or wrongfully altered document, for record in any claim or proceeding before a hearing examiner or other administrator of the fund, shall be punishable pursuant to the provisions of the Louisiana Criminal Code, R.S. 17:133, Filing False Public Records.

C. The intentional making of a false written or oral statement in, or for use in any claim, proceeding or testimony before a hearing examiner or other administrator of the fund, under sanction of an oath, sworn affidavit or an

equivalent affirmation, shall be punishable pursuant to the provisions of the Louisiana Criminal Code, R.S. 14:123, Perjury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.2.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:513 (August 1980).

§1515. Assessment of Fees

A. Effective November 1,1979, in order to establish the Fishermen's Gear Compensation Fund, a fee in the amount of $300 is levied upon each lessee of a state mineral lease, and each grantee of a state right-of-way which is located within the coastal zone boundary as described in R.S. 49.213.4, October 20,1979.

1. For definition herein:

a. *Lessee of a State Mineral Lease* the owner of the right to sever minerals from state owned water bottoms whether or not such right is derived by lease, operating agreement, or otherwise.

b. *Grantee of a State Right of Way* the owner of a pipeline right-of-way grant and no other.

B. The balance in the Fishermen's Gear Compensation Fund is less than $250,000 and, pursuant to R.S. 56:700.2, (as amended, Act 337 of 1991) an additional fee of $500 will be assessed on each lessee of a state mineral lease and each grantee of a state pipeline right-of-way located in the coastal zone of Louisiana, effective April 20, 1993.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.2.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:328 (October 1979), amended LR 9:15 (January 1983), LR 10:546 (July 1984), LR 11:1178 (December 1985), LR 12:602 (September 1986), LR 13:360 (June 1987), LR 15:497 (June 1989), LR 16:320 (April 1990), LR 17:605 (June 1991), LR 18:391 (April 1992), LR 19:501 (April 1993).

§1517. Rules for Labeling Equipment, Tools, Materials, and Containers Used by the Oil and Gas Industry within Louisiana Coastal Waters

A. For the purposes of this regulation, the term *waters of the coastal zone* means those rivers, streams, lakes, and all other water courses within the boundaries of the Louisiana coastal zone, R.S. 49:214.24.

B. Materials, equipment, tools, containers, and other items used in the waters of the coastal zone which are of such shape and configuration that they are likely to snag or damage fishing devices shall be handled and marked as follows:

1. all loose material, small tools and other objects shall be kept in marked containers when not in use or before transport in waters of the coastal zone;

2. all cable, chain, tires or wire segments shall be recovered after use and securely stored;

3. skid-mounted equipment, portable containers, spools or reels, materials on the reels, and drums shall be labeled with the owner's name prior to use or transport in waters of the coastal zone;

4. all labels shall clearly identify the owner and shall be durable enough to resist the effects of environmental conditions to which they are exposed.

C. Each incident of items lost overboard shall be reported initially by telephone to the Department of Natural Resources (225) 342-0122 during regular business hours, and also on a standard form to be provided by the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 17:272 (March 1991).

Chapter 17. Claiming Severance Tax Exemption under Act 673 of 1986 (R.S. 47:648.11)

§1701. Rules for Claiming Severance Tax Exemption under Act 673 of 1986 (R.S. 47:648.1)

A. R.S. 47:648.1 established a qualified severance tax exemption on the first 10,000 barrels of oil produced annually from a well which is drilled between July 15,1986 and July 15, 1987. This exemption is qualified in that it applies only to the first 50 barrels of oil removed from the ground in each day, although the 10,000 barrel limitation is calculated from the total production of the well. This exemption may be claimed from the date of first production from each well until July 15, 1990, except for months when the value of oil, as reported to the Department of Revenue and Taxation under R.S. 47:633(7), exceeds $21 per barrel.

B. The tax exemption does not apply to:

1. condensate, distillate, or similar natural resources produced from a well classified as a gas well by the assistant secretary of the Office of Conservation;

2. casinghead gas produced with oil from a well drilled between July 15, 1986 and July 15, 1987;

3. oil from a well on which drilling began prior to July 15, 1986;

4. oil from a well on which drilling is done after July 15,1987;

5. oil from a well with a price per barrel greater than $21 as reported under R.S. 47:633(7);

6. oil from a well following, or in excess of, the first 50 barrels produced on any day;

7. oil from a well following, or in excess of, the first 10,000 barrels produced in any year.

C. The Department of Revenue and Taxation will provide forms for claiming the severance tax exemption, together with instructions. The amount of exempt production

will be reported each month by the producer of the oil. A copy of the producer's report will be provided by the producer to the party remitting the taxes. The taxpayer will report the exempt sales on the SEV Old under Tax Rate 7, or upon such other forms as may be specified by the Department of Revenue and Taxation. No production shall be exempt from severance taxes unless the taxpayer first provides an Office of Conservation certification that the well qualifies for the exemption, to the Department of Revenue and Taxation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:648.11.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 12:771 (November 1986).

Chapter 19. Energy Rated Homes

§1901. ERHL Fee Schedule

A. As required by R.S. 36:354, the following fees shall be assessed in order to provide funding for services offered by the new Energy Rated Homes of Louisiana section of the Department of Natural Resources, Technology Assessment Division, Energy Section.

Ratings	
Regular Ratings	$50/hr. with minimum 4 hours
Ratings Requiring Post Retrofit Inspection	$50/hr. with minimum 5 hours
House Plan Review	$50/hr. with minimum 2 hours
Residential Walk-Through Audits	$50
Training	$10/hr./student or actual costs incurred
Building Diagnostics	
Energy Use	$ 50/hr.
Moisture Damage	$ 50/hr.
Indoor Air Quality	
On-Site Time	$ 50/hr.
Equipment Charges for 10-Day Monitoring Period	$200

B. All fee payments shall be made by check, draft or money order to Energy Rated Homes of Louisiana, Department of Natural Resources, Technology Assessment Division, Energy Section, P.O. Box 44156, Baton Rouge, LA 70804-4156.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:354.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Energy Division, LR 21:182 (February 1995), repromulgated LR 21:272 (March 1995).

Title 43
NATURAL RESOURCES
Part I. Office of the Secretary
Subpart 2. Oilfield Site Restoration

Chapter 21. Administration

§2101. Memorandum of Understanding

A. The Oilfield Site Restoration Commission, created within the Department of Natural Resources, the secretary, and the assistant secretary for the office of conservation have been delegated certain authority for the administration of this Part by Act 404 of the 1993 Regular Session of the Louisiana Legislature. A memorandum of understanding shall be prepared and signed by each of these entities for the purpose of delineating and agreeing on the authority and function to be served by and between each of them for the administration of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:397 (April 1995), repromulgated LR 21:471 (May 1995).

§2103. Oilfield Site Restoration Commission

A. The commission shall perform all duties and functions authorized or imposed upon it by the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature. The commission shall further enter into a memorandum of understanding in which it assumes the responsibilities and delegates the authority to the secretary according to the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature.

B. The commission shall receive and administer the oilfield site restoration fund and the site-specific trust accounts within the fund, as provided by law, and is authorized to expend monies from the fund for its administration of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:397 (April 1995), repromulgated LR 21:471 (May 1995).

§2105. Office of the Secretary

A. The secretary shall perform all duties and functions authorized or imposed upon him by the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature. The secretary shall further enter into a memorandum of understanding in which he assumes the responsibilities and delegation of authority according to the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature.

B. The office of the secretary is authorized to expend a sum, not to exceed $200,000 per annum, for the department's administration of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:471 (May 1995).

§2107. Office of Conservation—Assistant Secretary

A. The assistant secretary shall perform all duties and functions authorized or imposed upon him by the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature. The assistant secretary shall further enter into a memorandum of understanding in which he assumes the responsibilities and delegation of authority according to the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature.

B. After review of existing rules of the office of conservation, the assistant secretary, shall promulgate any additional rules necessary for implementation of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:471 (May 1995).

Chapter 23. Oilfield Site Restoration Fund

§2301. Establishment of the Fund

A. The commission, upon approval of the secretary, may enter into one or more agreements with a private legal entity to receive and administer the "Oilfield Site Restoration Fund," which shall be an interest bearing trust fund.

B. The fund shall be and remain the property of the commission.

C. The monies in the fund shall be used solely for the purposes of this Part.

D. The secretary shall:

1. certify to the Secretary of the Department of Revenue and Taxation, the date on which the fund equals or exceeds the sum of $10 million (hereinafter referred to as the cap); and

2. the fees as provided for in R.S. 30:87 shall not be collected after the first day of the second month following certification that the cap has been reached; and

3. the Secretary of the Department of Revenue and Taxation shall resume collection of the fees upon certification by the secretary that, based on expenditures or the commitment to expend monies, the fund has fallen below $6 million;

4. site-specific trust account funds within the fund shall not be counted to determine the cap.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:471 (May 1995).

§2303. Assessment of Fees

A. Effective September 1, 1993, in order to establish the oilfield site restoration fund, the following fees shall be paid:

1. $0.01 on each barrel of oil and condensate from producing wells. Production shall be determined based on severance tax collections on each well;

2. $0.005 on each barrel of oil and condensate from incapable wells. Production shall be determined based on severance tax collections on each well;

3. $0.0025 on each barrel of oil and condensate from stripper wells. Production shall be determined based on severance tax collections on each well;

4. $0.002 per thousand cubic feet on gas. Production shall be determined based on severance tax collections on each well.

B. Effective July 1, 1995 the fee shall be increased by 5 percent annually, in each of the above categories, until such time as the fee has been increased by 100 percent per site after which no further increases shall occur.

C. The royalty and overriding royalty owners shall not bear the burden of the fees imposed hereinabove.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:472 (May 1995).

§2305. Site-Specific Trust Accounts; Accounting Method

A. Prior to the establishment of the first site-specific trust account on any oilfield site, where there are one or more wells associated with a transfer of ownership interest, any party to the transfer may file an application with the secretary, on a form provided by the department, requesting approval of a site-specific trust account based on a site assessment estimate, for restoration of the site so transferred, in compliance with oilfield site restoration under LAC 43:XIX.101, et seq.

B. After a site-specific trust account has been established on any oilfield site, including one or more wells, any subsequent transfer of any interest in one or more wells included in the account shall be reported to the secretary, on a form provided by the department. The secretary shall review the reported transfer and determine whether any modifications or adjustments to the account shall be made. Once a site-specific trust account has been approved the secretary shall issue a letter of determination to the transferror indicating that he shall be exempt from liability in accordance with this Part.

C. Upon application to the department, on a form provided by the department, by the seller and the purchaser of an oilfield site transferred prior to August 15, 1993, subject to agreement by the assistant secretary for the office of conservation, a site-specific trust account may be established, or, a prior established private trust account may be transferred to the oilfield site restoration fund. Any trust account being transferred shall be subject to review and may be modified to meet the requirements of these rules.

D. Once a site-specific trust account has been established the secretary may modify the funding requirements of the account at any time during the life of the oilfield site, upon recommendation of the commission, the assistant secretary, or upon his own determination, based upon changes in operation, site conditions, or trust account status. After approval and establishment of a site-specific trust account only the responsible party shall be liable for payment of any modifications or adjustments required by the secretary.

E. When a transfer of an ownership interest (where there is an existing trust account), is reported to the secretary, as required by this Part, the secretary may, after review, determine, based on the nonsubstantial nature of the interest being transferred or the adequacy of the trust account, that no adjustment or modification to the existing trust agreement is necessary. If this occurs the secretary shall issue a letter of determination to the transferror indicating that he shall be exempt from liability in accordance with this Part.

F. The party or parties to a transfer who propose to establish a site-specific trust account shall:

1. propose a funding schedule, based on the site restoration assessment, which will fully fund the site restoration at the end of the economic life of the oilfield site;

2. pay some contribution into the trust account at the time of transfer and make quarterly payments into the trust account throughout the economic life of the oilfield site.

G. Site-specific trust account funds shall only be used to restore the specific site to which they are dedicated.

H. At the end of the economic life of an oilfield site the responsible party shall restore the site according to the standards set forth in LAC 43:XIX.101, et seq. If the responsible party has restored the site, upon approval by the assistant-secretary, the monies in the site-specific trust account shall be returned to him.

I. The commission may establish accounting procedures which will enable every transfer, whether it be one well site, a group of well sites, or a field, to be set up in one account for purposes of payment to the account. However, each well site may be accounted for in sub-accounts for purposes of tracking the individual production for its adequacy in

maintaining support of the trust. The accounting procedure may also provide for moving a sub-account to a new or existing trust account in the event of a partial transfer of properties subsequent to an initial trust being established thereby segregating the transferred properties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:472 (May 1995).

§2307. Use of the Fund

A. In addition to the administrative cost provided for herein, the monies in the fund may be disbursed and expended as directed by the secretary for the following purposes:

1. any oilfield site assessments or restoration conducted by the department pursuant to this Part. Provided, however, that the amount of money expended for the cost of a site assessment shall not exceed 10 percent of the cost to restore the site;

2. any costs and fees associated with the recovery of site restoration costs and penalties pursuant to R.S. 30:93 and 94;

3. the costs of assessment or restoration of commercial facilities as defined in R.S. 30:73(4) not to exceed 25 percent of any sums deposited within the same calendar year in which the monies are expended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:399 April 1995), repromulgated LR 21:472 (May 1995).

Chapter 25. Oilfield Site Restoration

§2501. Office of the Secretary; Oilfield Site Assessments or Restoration

A. The secretary or his agents, upon proper identification and notification, may enter the land of another for purposes of oilfield site assessments or restoration.

B. The secretary may enter into contracts for the purposes of site assessments or restoration to carry out the provisions of this Part, under the following circumstances.

1. When the secretary has declared in writing an emergency, he may take informal, detailed written bids from at least three contractors without the necessity of meeting the requirements of the state public bid law. Before execution of a contract, under emergency declaration, a performance bond shall be furnished by the contractor and the contracts shall be reviewed by the commissioner of administration.

2. Where no emergency exists, all contracts shall be made pursuant to the state public bid law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:399 (April 1995), repromulgated LR 21:472 (May 1995).

§2503. Oilfield Site Restoration Assessments; Site-Specific Trust Accounts

A. In the event that the parties to the transfer of an oilfield site elect to establish a site-specific trust account an oilfield site restoration assessment may be made prior to the transfer, or within one year from the date of the transfer, as required by the secretary.

B. An oilfield site restoration assessment shall be performed by a contractor chosen from the list of contractors approved by the commission or a contractor who submits his credentials to the commission for approval and is subsequently added to the list.

C. A site restoration assessment shall specifically detail site restoration needs and shall provide an estimate of the site restoration costs needed to restore the oilfield site, in accordance with the standards set forth in LAC 43:XIX.101, et seq., based on the conditions existing at the time of the transfer. The site restoration assessment shall be reported on a form provided by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:399 (April 1995), repromulgated LR 21:742 (May 1995).

Chapter 27. Liability; Limitations

§2701. Non-Orphaned Oilfield Sites

A. The responsible party is liable for the site restoration of an unusable oilfield site.

B. If the responsible party fails to complete restoration of an oilfield site and the assistant secretary, after notice and hearing, has declared the site to be unusable, the secretary is authorized to disburse such funds as are necessary for site restoration from the site-specific trust account. After completion of the site restoration any remaining funds in the site-specific trust account shall be remitted to the responsible party.

C. If the site-specific trust account is depleted prior to the payment of all site restoration costs, the department shall attempt to collect the remainder of site restoration costs from the responsible party or ensure that the responsible party completes the site restoration to the satisfaction of the assistant secretary. If the responsible party is still unable to complete the site restoration, and the assistant-secretary declares the site to be orphaned, the Oilfield Site Restoration Fund shall contribute the balance of the restoration costs for the site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21:742 (May 1995).

§2703. Orphaned Oilfield Sites

A. If a party has transferred an oilfield site after May 1, 1993 for which a site-specific trust account was established and the transferror has remained in compliance with this Part he shall not be liable for any site restoration for the non-orphaned or orphaned oilfield site.

B. If the assistant secretary has declared an oilfield site to be orphaned which was transferred prior to May 1, 1993 the secretary may expend monies from the fund to fully restore the site. Except for the responsible party, the secretary shall not be authorized to recover the restoration costs from parties which formerly operated or held working interest in the orphaned site unless the costs to fully restore the site exceed $200,000. Transfer of an oilfield site shall be deemed to have taken place prior to May 1, 1993 where a purchase and sale agreement has been executed prior to May 1, 1993 and closing takes place within 120 days of execution.

C. If the assistant secretary has declared an oilfield site to be orphaned which was transferred after May 1, 1993 for which no site-specific trust account was established no responsible party, prior operators, or working interest owners shall receive the exemptions provided for in this Part for the subject orphan site.

D. If the assistant secretary has declared an oilfield site to be orphaned which was transferred after May 1, 1993 for which a site specific trust account was established the site shall be restored in the following manner:

1. the secretary shall expend the site-specific trust account funds; and

2. the assistant secretary shall collect any deficiencies from the responsible party; and

3. the secretary shall expend a maximum of $200,000 from the general oilfield site restoration fund if there are remaining deficiencies; and

4. if there are still further deficiencies the secretary shall recover any remaining costs from any non-exempt prior operators and working interest owners in inverse chronological order from the date on which the oilfield site has been declared orphaned according to procedures established by the assistant secretary.

E. The state shall be exempt from the provisions of this Part.

F. The commission, the secretary, and the assistant secretary, and their agents, shall not be liable for any damages arising from an act or omission if the act or omission is part of a good faith effort to carry out the purpose of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21:472 (May 1995).

Chapter 29. Hearings; Appeals

§2901. Aggrieved Parties; Right to Hearing

A. The secretary shall not unreasonably withhold approval of a site-specific trust account. Any party who applies for a site-specific trust account and who is aggrieved by the decision of the secretary may request a hearing and finally judicial review in accordance with the hearings and appeal process established in Part I Chapter 1 of Title 43 of the Louisiana Administrative Code in the general rules and regulations in the Office of the Secretary.

B. Any party who is aggrieved by a decision under this Part by the commission, the secretary, or the assistant secretary, shall be entitled to a hearing and appeal process as set forth above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21:472 (May 1995).

Chapter 31. Penalties

§3101. Violations of this Part

A. Any violations of this Part shall be subject to the penalties as provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21:472 (May 1995).

Title 43
NATURAL RESOURCES
Part I. Office of the Secretary
Subpart 3. Oyster Lease Damage Evaluation Board Proceedings

Chapter 37. General

§3701. Purpose

A. These rules are adopted pursuant to R.S. 56:700.10 et seq. to provide for the filing and processing, and the fair and expeditious settlement, of claims pursuant to Part XV of Chapter 1 of Title 56 of the Louisiana Revised Statutes of 1950. These rules are designed to insure that the claims procedure is as simple as possible, and these rules shall be interpreted in that spirit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 25:308 (February 1999).

§3703. Definitions

A. As used in LAC 43:I.Subpart 3, unless the context requires otherwise, the terms set forth below shall have the following meanings.

Biological Survey a survey made to determine the biological test data, which is reported on a form prescribed by the board.

Biological Test Data surveys of oyster beds and grounds by a certified biologist to determine the quality, condition and value of oyster beds and grounds.

Board the Oyster Lease Damage Evaluation Board.

Certified Biologist a biologist certified by the board as qualified to make biological surveys.

Department the Department of Natural Resources.

Final Biological Survey the biological survey made and filed by the owner or leaseholder, as applicable, pursuant to §3903.C.

Initial Biological Survey the biological survey made and filed by the owner or leaseholder, as applicable, pursuant to §3903.A.

Intervenor a party having an interest in the proceedings who is granted permission by the board to take part in the proceedings to the extent reasonable and necessary to assert or protect such party's interests.

Leaseholder an owner of an oyster lease granted by the Department of Wildlife and Fisheries.

Mineral Activity exploration (including all seismic operations) production, transportation (of equipment or product) and any other activity associated with the production of oil and gas. Also referred to as *Oil and Gas Activity*.

Owner an owner or operator of a mineral activity.

Part XV Part XV of Chapter 1 of Title 56 of the Louisiana Revised Statutes of 1950.

Party leaseholder, owner or intervenor.

Secretary the Secretary of the Department of Natural Resources, or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:308 (February 1999).

Chapter 39. Damage Evaluation Process

§3901. Request for Arbitration

A. Either an owner or a leaseholder who has been requested by an owner to enter into a settlement for damage to the leasehold which may occur due to the owner's proposed oil and gas activity that is expected to intrude upon the leasehold may file with the board a preliminary request for arbitration of the leaseholder's claim for damage in accordance with Part XV and LAC 43:I.Subpart 3.

B. The preliminary request shall contain the information required by a form prescribed by the board. A copy of the preliminary request and any annexed documents shall be served on the other party by the filing party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:308 (February 1999).

§3903. Biological Surveys

A. The initial biological survey shall be based on onsite inspection and evaluation and shall be made to determine the quality and value of the beds and grounds expected to be affected by the proposed oil and gas activity.

B. If a preliminary request for arbitration is filed but the owner does not file the initial biological survey report within 60 days of service of the preliminary request for arbitration, the leaseholder may apply to the board for an order to have the initial biological survey made and filed by the owner.

C. Upon completion of the oil and gas activity proposed by the owner, the owner shall have a final biological survey made at the owner's expense and filed with the board together with a request for arbitration within 60 days of completion of the oil and gas activity, to furnish a basis for determination of the actual damage to the leasehold sustained as a result of the oil and gas activity.

D. If the leaseholder believes that the oil and gas activity proposed by the owner has been completed, and that the final biological survey has not been timely made and filed by the owner, the leaseholder may call for a hearing to determine whether the owner has complied with §3903.C hereof. If upon hearing the board finds that the owner has not so complied, the board shall permit the leaseholder to have a final biological survey made and filed together with a request for arbitration, and the reasonable cost of this survey shall be assessed against the owner as part of the actual damage sustained by the leasehold.

E. The board shall engage experts to assist the board in establishing a uniform evaluation method to be followed by certified biologists in determining the quality, condition and value of the oyster beds and grounds before the oil and gas activity takes place and in determining the estimated damage or loss to the leasehold after the activity is completed.

F. The uniform evaluation method adopted by the board shall be made available to all parties and all certified biologists for use in proceedings before the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:308 (February 1999).

§3905. Certification and Selection of Biologists

A. Biologists having a minimum educational attainment of a degree in a biological science, or having been accepted by a federal or state court in Louisiana as an expert witness in the field of oyster biology or oyster ecology may apply to the board for certification. The application for certification shall be accompanied by a résumé of educational attainments and work experience, certified copies of transcripts, and any other information considered useful to the board in assessing the qualifications of the applicant as to competency in making biological surveys required by Part XV and LAC 43:I.Subpart 3. The board shall consider the application for certification and information submitted in support thereof and may in the exercise of the board's discretion certify the applicant as a biologist qualified to make biological surveys required by LAC 43:I.Subpart 3.

B. The board shall annually review and maintain a list of certified biologists from which a selection must be made of a biologist to make any biological survey provided for by Part XV or LAC 43:I.Subpart 3.

C. The board may decertify the certified biologist, after a hearing, upon a finding of unsatisfactory performance.

D. When an owner is required to have a biological survey made under Part XV, he must choose one of a group of three certified biologists submitted by the board to the owner.

E. The selection of the group of three certified biologists to be submitted to the owner as provided above shall be made by the board from the list of all certified biologists, in the following manner.

1. The initial order of listing of the certified biologists shall be determined by drawing lots under the supervision of the board.

2. The initial group of three certified biologists shall be comprised of the top three individuals on the list.

3. The next group of three certified biologists shall be formed by striking the individual of the initial group chosen by the owner and adding the next individual listed below the initial group.

4. Succeeding groups shall be formed by proceeding down the list in like manner until there are less than three individuals left on the list, at which point a new list of all of the certified biologists shall be made and the order of listing redetermined by again drawing lots.

5. Selection of subsequent groups shall be made in the same manner as provided above for the initial list.

F. In the case of a biological survey made pursuant to §3903.D, the leaseholder may select a certified biologist in the same manner as an owner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:309 (February 1999).

§3907. Estimated Damage Deposit

A. Upon filing of the initial biological survey, the board shall determine the amount of the damage estimated to be sustained by the leasehold as a result of the proposed oil and gas activity, and shall notify the parties of the board's determination.

B. Upon a showing of urgent circumstances, the board will expedite to the extent practicable its determination of estimated damage.

C. Upon payment of a deposit with the board of the amount of the damage estimate made by the board, the owner may proceed with the proposed oil and gas activity. The deposit shall be invested with the state treasury as security for payment of any damage award and for payment of interest earned on the amount of the award.

D. If the deposit is not made within 30 days after notice of the board's estimated damage determination, the board may, in its discretion, dismiss the proceeding and order the owner to reimburse the leaseholder the amount of any filing fee paid by him.

E. The owner may, at any time prior to payment of the deposit, withdraw the owner's original request to the leaseholder to enter into a settlement, and proceedings hereunder shall thereupon terminate. Withdrawal shall be effective upon notice to the board and the leaseholder, and upon reimbursement by the owner to the leaseholder of any filing fee paid by him.

F. If, after the deposit is made, the owner does not commence the proposed activity within a reasonable time, the board may, upon hearing, award the leaseholder any filing fee paid by him and the reasonable cost of any survey

that may have been separately undertaken by him, pay such award out of the deposit, and return the balance of the deposit to the owner, with interest earned on such balance, and dismiss the proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:309 (February 1999).

§3909. Hearings and Determination of Actual Damage

A. Upon filing of the final biological survey together with a request for arbitration, the board shall call for a hearing to determine the actual damage sustained by the leasehold as a result of the oil and gas activity. The amount of actual damage determined by the board after hearing and review by the secretary shall be due by the owner to the board for the benefit of the leaseholder. If the damage award does not exceed the amount of the deposit made by the owner in accordance with §3907.B and D hereof, the board shall pay the amount of the award out of the deposit, together with interest earned thereon, to the leaseholder, and the balance, if any, shall be paid to the owner, together with interest earned on such balance. If the award exceeds the amount of the deposit the board shall pay the entire amount of the deposit, together with the interest earned thereon, to the leaseholder and shall order the owner to pay the leaseholder the amount of the difference between the award and the deposit together with legal interest thereon from the date of the initial deposit.

B. The determination of damage by the board and review by the secretary shall be based on the values shown in the biological surveys and shall reflect true and actual damage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:309 (February 1999).

§3911. Conduct of Hearings

A. The board shall give reasonable notice of all hearings to all parties.

B. The notice shall include:

1. a statement of the time, place, and nature of the hearing;

2. a statement of the legal authority and jurisdiction under which the hearing is to be held;

3. a reference to the particular sections of the statutes and rules involved;

4. a short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

C. At the hearing, all parties shall have the opportunity to respond and to present evidence on all issues of facts involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

D. The hearing record shall include:

1. all pleadings, motions, and intermediate rulings;

2. evidence received or considered or a résumé thereof if not transcribed;

3. a statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;

4. offers of proof, objections, and rulings thereon;

5. proposed findings and exceptions; and

6. any decision, opinion, or report by the board or the secretary.

E. The board shall, at the request of any party or person, have prepared and furnish him with a copy of the transcript or any part thereof upon payment of the cost thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:310 (February 1999).

§3913. Discovery

A. Parties may obtain discovery by written interrogatories, production of documents and things, requests for admission, and permission to enter upon land or other property for inspection and other purposes, limited in scope to the following matters:

1. the oil and gas activity conducted or to be conducted by the owner;

2. the quality and value of the oyster beds and grounds expected to be affected by the proposed oil and gas activity; and

3. the actual damage sustained as a result of the oil and gas activities.

B. The board in its discretion may allow discovery as to other matters, and in exceptional circumstances may allow discovery by deposition.

C. A party may serve upon any other party written interrogatories to be answered separately and fully under oath, unless objection upon stated grounds is made to an interrogatory. Interrogatories may be served with the preliminary request for arbitration or at any time after filing of the preliminary request, and shall be answered within 30 days after service.

D. Any party may serve on any other party a request to produce and permit the party making the request to inspect and copy any designated documents including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained or inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of permissible discovery and which are in the possession, custody, or control of the party upon whom the request is served; or permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the

scope of permissible discovery. The request may be served with the preliminary request for arbitration or at any time after filing the preliminary request. The request to inspect and copy shall describe each item or category of items to be inspected with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 15 days after service of the request stating that inspection and related activities will be permitted as requested unless the request is objected to in whole or in part, on stated grounds.

E. A party may serve upon any other party a written request for the admission, for purposes of the pending arbitration proceeding only, of the truth of any matters within the scope of permissible discovery set forth in the request, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may be served with the preliminary request for arbitration or at any time after filing the preliminary request. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection upon stated grounds addressed to the matter. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admissions; and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. Any matter admitted is conclusively established unless withdrawn or amended prior to a hearing on the merits, or thereafter if not substantially prejudicial to the requesting party.

F. Discovery Proceedings. Discovery proceedings shall be conducted under the supervision of the board and any party may apply to the board for an order or other relief as justice may require. The board may, after hearing, impose upon any party who fails unreasonably to comply with discovery rules or with an order of the board the reasonable expenses, including attorney fees, incurred by the other party or parties as a result of such failure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:310 (February 1999).

§3915. Duration of Oil and Gas Activity by the Owner

A. A proposed oil and gas activity shall be deemed completed when the last damaging event occurs during the course of the activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:311 (February 1999).

§3917. Limitations for Filing of Claims

A. The leaseholder must file his preliminary request for arbitration within two months of the date of receipt from the owner of the owner's request to the leaseholder to enter into a settlement for the damage which may be sustained due to the owner's proposed oil and gas activity expected to intrude upon the leasehold.

B. The owner may file a preliminary request for arbitration at any time after the owner determines in good faith that a settlement between the owner and the leaseholder cannot be reached. However, if the owner, by implementing the proposed oil and gas activity, intrudes on the leasehold prior to payment of the required deposit in accordance with Part XV, initiation of proceedings under Part XV shall thereupon become barred, and if proceedings are pending, shall thereupon be dismissed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:311 (February 1999).

§3919. Notices, Filings, and Service of Copies

A. All notices, filings and service of copies provided for herein shall be in writing and shall be effective upon physical delivery to the proper recipient or upon placing same in the U.S. mail, certified, with receipt requested, addressed to the proper recipient. Notices, filings and service of copies may also be transmitted by facsimile equipment and shall be effective upon transmittal, if followed by delivery or mailing of the original document within a reasonable time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:311 (February 1999).

§3921. Fees

A. The filing fee of $500 shall be paid to the board upon filing the preliminary request for arbitration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:311 (February 1999).

§3923. Judicial Review

A. Any party who is aggrieved by the final decision or order in these proceedings is entitled to judicial review thereof.

B. Proceedings for judicial review of the final decision or order shall be instituted by filing a suit for judicial review in the district court of the parish in which the oyster lease is situated within 30 days of service of the notice of the final decision or order. Copies of the petition for judicial review shall be served upon the board and all parties to these proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 25:311 (February 1999).

Title 43
NATURAL RESOURCES
Part III. Office of Management and Finance

Chapter 1. Information Processing Section

§101. Rate Schedule for Copies of Computerized Public Records

A. In accordance with the rule adopted by the Division of Administration pertaining to the uniform fee schedule for copies of public records, the Department of Natural Resources (DNR) has adopted a rule which institutes a schedule of rates to recover its costs in providing copies of computerized public records to non-governmental, private sector bodies. This schedule includes rates for those records provided on computer magnetic tape, those provided on computer printouts, and those provided via terminals.

1. The rates are as follows.

a. Output from the DNR Information Processing Center

i. Job Set Up/Take Down. Each request received from the private sector for a copy of computerized records requires the involvement of production control technicians who must set up the job, submit the job for processing, review the output according to quality control standards, and prepare the output for transmittal to the requestor. A flat rate of $20 per job is charged.

ii. Systems Analyst and Programmer Involvement. Certain jobs require the involvement of a systems analyst and/or a computer programmer to customize existing "utility" programs to meet the requestor's requirements. Each hour worked by an analyst or programmer is charged at a rate of $50.

iii. CPU-Related Resources. The selection, extraction, processing and sorting of data consume a combination of DNR computer resources, including CPU usage, memory usage, I/O channels, disk access, and tape access. The combined usage of these resources is logged by DNR in units of Standard Unit of Processing (SUP) hour. Each SUP hour is charged at a rate of $450.

iv. Printing. All printing is done on a laser printer producing 8 1/2" x 11" pages. Each image is charged at a rate of $0.10.

v. Magnetic Tapes. Users requesting records on magnetic tape are encouraged to supply their own 2,400 foot tapes. Those not doing so are charged $25 for each tape provided by DNR.

vi. Postage Charged on an actual cost basis.

b. Output from DNR Computer Terminals. Department of Natural Resources has several computer terminals which are available to the public to access public records. These terminals are located in the Well Files area in the Natural Resources Building in Baton Rouge and in the Conservation District Offices. Currently, no charged is imposed to use these terminals, although there is a $0.25 charge for a copy of any terminal screen which is printed on the terminal printer.

c. Output from Non-DNR Computer Terminals. DNR allows private sector individuals and organizations to dial-up the DNR computer and access public records. Each user of this service must pay a one-time set-up charge of $150, with an annual renewal charge of $100. Each hour of connect time is charged at a rate of $49.80 per hour, plus telephone charges for users outside of Baton Rouge. Transaction-based access is provided at no additional charge, while table-based query-oriented access is provided at a uniform cost based on SUP hour usage. Technical support, if required, is provided at a charge of $50 per hour. Documentation is provided at a charge of $10 per copy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:241.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Management and Finance, LR 11:704 (July 1985), amended LR 19:1031 (August 1993).

Title 43
NATURAL RESOURCES
Part V. Office of Mineral Resources

Chapter 1. Geophysical and Geological Surveys

§101. Geophysical and Geological Surveys

A. Permits for geophysical and geological surveys under Title 30, Chapter 3, Sections 211 through 216 of the Louisiana Revised Statutes of 1950 shall be obtained from the State Mineral Board through the Office of Mineral Resources. Applications for a permit for such exploration must be filed in quadruplicate with one copy addressed to the Secretary of the Department of Natural Resources and three copies addressed to the Deputy Assistant Secretary of the Office of Mineral Resources at least 10 days before the requested effective date of the permit and each such copy must be accompanied by supporting documents as follows.

1. If the permittee is a shooting company, i.e., a company whose primary business enterprise is the physical, "on-ground" acquisition of seismic and geophysical data and the transferal of said acquired data, in either raw or processed form, exclusively to one or more cost underwriting parties or by sale or licensing agreements on the open market, it shall give the name of the client(s) for whom the seismic is being shot under the permit or, if a speculative shoot, a statement to that effect. If permittee is not a shooting company, it shall give the name of the shooting company which will do the physical, "on-ground" acquisition of the seismic or geophysical data under the permit, including current mailing address and telephone number.

2. A statement of the type of work planned, such as gravity meter, magnetometer, reflection, refraction, 2-D, 3-D and/or any other recognized methods of acquiring seismic, geophysical or geological data. It is required that the official permit application available on request from the Office of Mineral Resources be used.

B. No permit issued hereunder shall cover, nor shall any project for which the permit is secured include, acreage covered by a valid state mineral lease in full force and effect at the time the permit is secured. However, if the permit applicant secures the appropriate consent from the state mineral Lessee to conduct the type of seismic operations contemplated under the permit application over the state mineral lease acreage included within the prospective project area, the permittee shall have the right under the applied for permit to conduct the type of seismic operations set forth in the permit application over the state mineral lease acreage without the necessity of securing an addendum thereto or an additional permit. Upon the expiration, lapse, or termination of any state mineral leases, the acreage of which falls within a project area delineated in a seismic permit issued hereunder, during the term in which the said seismic permit is in full force and effect, the respective permit for the project area which includes the expired, lapsed, or terminated state mineral lease acreage shall be deemed to cover, and the project area to include, said acreage without the necessity of any further permission from the State Mineral Board, and the seismic operations contemplated under the said permit may be conducted upon such acreage, but only for such time as the permit term remains in force and effect, and no longer. Permits are limited to a period of one year from date of issuance, unless revoked for cause.

C. In order to accommodate proper administration of seismic permits issued hereunder and orderly operations conducted under said permits, the applicant shall submit to the Office of Mineral Resources ("OMR") notice of the date of commencement of any seismic operations authorized by the permit, a plat acceptable to the Staff of the OMR reasonably identifying and locating each particular grid area in which operations are to be conducted and, after completion of field operations under the permit, a supplemental plat showing details of any work done in addition to that set forth in the permit application; which plat shall reflect the locations of the lines or grids shot, all shot point and/or geophone locations, and the date of completion of said additional work. The permittee, may, but shall not be required to, voluntarily agree to make available to OMR, at permittee's or OMR's office at permittee's option, the fully migrated and processed data derived from the seismic project under the issued permit. All such plats and data secured by OMR shall be deemed confidential and not subject to the public records doctrine; but shall be for the use of OMR staff only. For purposes of this section, date of commencement of operations is defined as the date upon which surveying crews and equipment are moved into the area to be worked for purposes of preliminary line placement surveying prior to the beginning of acquisition of data.

D. A permit to conduct seismic, geophysical and/or geological surveying of any kind upon state of Louisiana lands or water bottoms over which the State Mineral Board through OMR has jurisdiction shall be subject to the following terms:

1. the permit shall be valid for a period of one year from date of issuance;

2. the permit shall be valid for the entire state of Louisiana, but the exercise of operations under the permit shall be limited only to the project area set forth in the application;

3. any and all rights exercised under a valid seismic permit issued hereunder shall be exclusive only to the named permittee or, if the permittee is not a shooting company, the

shooting company named in the permit application as the entity to actually do the physical, "on ground" seismic project;

4. no permit issued hereunder shall be transferable and shall be specific as to the party securing the permit, the party for whom the permitted work is being done, the project-including location plat, written description, and total acreage of state owned land and/or water bottom in the project area-covered by the permit, and the date of commencement of the permitted activity;

5. the permittee shall pay to OMR at the time of application for the seismic permit-by official bank check, certified funds, bank money order, or other certifiable funding method made payable to "Office of Mineral Resources" an amount of money equal to $200 per mile for 2-D lines, $2 per acre multiplied by the total number of state owned lands and/or water bottoms located within the seismic project area as set forth in the application for other than 2-D or $1,000, whichever is greater. The OMR staff reserves the right to verify the total length to the nearest mile of the proposed 2-D seismic lines or the total amount of state owned lands and/or water bottoms within the project area and, if necessary, require additional funds from the permittee if the verified length or acreage exceeds the length or acreage set forth in the application.

E. Violation by the permittee of any of the terms specified in this schedule as promulgated, or which may be written on the permit form, shall be deemed to be a permit violation by OMR which may, at the sole discretion of OMR, subject permittee to the cancellation of his permit and forfeiture of his permit fee.

F. Pursuant to R.S. 30:124 any and all rights exercised by any permittee pursuant to a permit issued hereunder shall be in compliance with any and all applicable rules and regulations which have been promulgated, and which may be further promulgated from time to time, by the Department of Wildlife and Fisheries governing the conduct of seismic exploration on land and/or water for the protection of oysters, fish, and wildlife. Further, all wildlife and waterfowl refuges, game and fish preserves, or oyster seed ground reservations, the mineral rights over which the Department of Wildlife and Fisheries exercises direct control, shall not be included in any project area covered by any permit issued hereunder unless written permission is secured from said agency.

G. The approval of the State Mineral Board, through its duly authorized officer, of any permit, is granted subject to any future rules which may be adopted by the State Mineral Board from time to time. The board hereby declares that in the event any changes in the rules are effected, 30 days written notice shall be given to all permittees whose permits are still in effect.

AUTHORITY NOTE: Promulgated in accordance with Act 13, First Extraordinary Session, 1988, R.S. 30:136(A)(2) and 30:142(A), as amended by Acts 1017 and 1018 of 1990, R.S. 30:209 and 209.1, as amended by Acts 530 and 531 of 1997, and R.S. 30:211 through 216.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 26:1060 (May 2000).

§103. Exclusive Geophysical Agreements

A. Exclusive geophysical agreements authorized under Title 30, Chapter 3, Section 208 through 209.1 of the Louisiana Revised Statutes of 1950 may be obtained from the State Mineral Board, through the Office of Mineral Resources.

B. There are three types of exclusive geophysical agreements which may be secured from the Office of Mineral Resources, namely: Exclusive Geophysical Agreement Type I, Exclusive Geophysical Agreement Type II, and Exclusive Geophysical Agreement Type III. The following shall apply to all exclusive geophysical agreements secured hereunder.

1. The area to be covered by the Exclusive Geophysical Agreement shall be nominated just as a lease with the description set forth in X/Y Lambert coordinates.

2. The exclusive geophysical agreements are to be awarded by public bid, just as leases are, at the monthly Mineral Lease Sale.

3. The OMR staff will determine the minimum per acre seismic fee which must be bid to be acceptable to the State Mineral Board for the awarding of the Exclusive Geophysical Agreement.

4. The nominated acreage will then be advertised on the same delay basis and in the same manner as lease nominations; which advertisement will state a property description of the geographical area over which the Exclusive Geophysical Agreement is to be awarded, the type of exclusive geophysical agreement sought and the minimum per acre seismic fee acceptable to the State Mineral Board as a bid, and the day, date, time, place of the next State Mineral Lease Sale at which bids will be accepted.

5. The term of the exclusive geophysical agreement shall be 18 months with an option for an additional six months, which option period shall be granted only upon written request by the bid winner made prior to the end of the original 18 month term and upon payment to the Office of Mineral Resources in the manner set forth as acceptable herein above of a sum of money equal to one-half of the original total fee bid and paid for the seismic agreement.

6. The Exclusive Geophysical Agreement awarded shall be subject to, and shall not supersede, any existing seismic permits, leases, or other agreements of any kind with the state of Louisiana in the nominated area at the time awarded.

7. The Office of Mineral Resources will get copies (hard copies and digital tapes) of all fully processed and migrated 3-D seismic data and any other geophysical and geological data, including, but not limited to, 2-D seismic, gravity (air or surface), and magnetic (air or surface) acquired under the Exclusive Geophysical Agreement. The

staff of the Office of Mineral Resources will by provided access to the seismic data, both processed and interpreted, at the facilities of the entity conducting the seismic operations under the Exclusive Geophysical Agreement awarded during all phases of the seismic operations with interpreted data to be accessed no later than one year following the end of the primary term of the Exclusive Geophysical Agreement, or the option term if activated.

8. The Exclusive Geophysical Agreement shall be available for the primary purpose of conducting 3-D seismic operations only, although other types of geophysical data may be acquired in addition to 3-D seismic, unless otherwise agreed upon by the Office of Mineral Resources and the nominating party.

C. In addition to §103.B above, the following shall apply to the Exclusive Geophysical Agreement Type I.

1. The State Mineral Board shall not grant any new seismic agreements or permits in the nominated area during the initial term of the Exclusive Geophysical Agreement, or the option term if activated, but does reserve the right to accept nominations for and grant new mineral leases within the nominated area of the Exclusive Geophysical Agreement. Any new mineral leases granted within the nominated area of the Exclusive Geophysical Agreement during its primary term, or option term if activated, shall be subject to the rights granted under the Exclusive Geophysical Agreement and the grantee shall not be required to deal with the state mineral Lessee in order to conduct seismic operations over the new lease acreage.

D. In addition to §103.B above, the following shall apply to the Exclusive Geophysical Agreement Type II.

1. The State Mineral Board shall not grant any new seismic agreements or permits, or any new leases in the Exclusive Geophysical Agreement area from the time it is nominated, during the initial term of the Exclusive Geophysical Agreement, or the option term if activated. However, a buffer zone of 1/2 mile will be established around existing leases within the area of the Exclusive Geophysical Agreement and only the lessee of the existing lease or the successful exclusive geophysical agreement grantee shall have the right to nominate acreage for a state mineral lease within that buffer zone during the initial term of the Exclusive Geophysical Agreement, or the option term if activated, which will then go up for public bid and the regular monthly state mineral lease sale.

2. The exclusive geophysical agreement grantee only shall have the right to nominate acreage within the exclusive geophysical agreement area for a state mineral lease during the primary term of the Exclusive Geophysical Agreement, or the option term if activated, except as to the buffer zone around existing leases as provided for in 9 above, which lease nominations shall not exceed 1500 acres each and shall not in aggregate amount exceed one-third of the entire acreage of the Exclusive Geophysical Agreement.

E. In addition to §103.B and D above, the following shall apply to the Exclusive Geophysical Agreement Type III.

1. The staff of the Office of Mineral Resources shall, after examination of the area nominated for the Exclusive Geophysical Agreement Type III, set a minimum royalty and bonus price per acre which would be acceptable by the State Mineral Board for a state mineral lease granted within that nominated area, which minimums shall be advertised within the advertisement for the nominated area.

2. The exclusive geophysical agreement grantee only shall have the right, within the initial term of the Exclusive Geophysical Agreement, or the option term if activated, to select for mineral leases tracts within the exclusive geophysical agreement area, not to exceed 1500 acres each or one-third in the aggregate of the entire acreage of the exclusive geophysical agreement area, and, upon payment to the Office of Mineral Resources of the amount of the per acre bonus as advertised and bid during the acquisition of the Exclusive Geophysical Agreement Type III multiplied times the acreage for each tract selected, plus an additional 10 percent administration fee, and have a state mineral lease issued by the Office of Mineral Resources on each selected tract which shall carry the royalty burden advertised and bid during the acquisition of the Exclusive Geophysical Agreement.

F. The State Mineral Board, through the Office of Mineral Resources, agrees to hold all information, maps, data of any and all kinds provided to the state under R.S. 30:213 or as a result of the terms of the exclusive geophysical agreements confidential and same shall not be available for view or use except by certain members of the staff of the Office of Mineral Resources in connection with the administration of state owned lands and water bottoms, and the state mineral leases thereon unless ordered by a court of proper jurisdiction to do so. Said information shall be kept under lock and key, except during the course of actual examination by the staff of the Office of Mineral Resources. Any violation of these requirements is hereby declared cause for peremptory removal from office or discharge from employment in addition to the penalties provided under R.S. 30:216.

AUTHORITY NOTE: Promulgated in accordance with Act 13, First Extraordinary Session, 1988, R.S. 30:136(A)(2) and 30:142(A), as amended by Acts 1017 and 1018 of 1990, R.S. 30:209 and 209.1, as amended by Acts 530 and 531 of 1997, and R.S. 30:211 through 216.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 26:1061 (May 2000).

Chapter 2. Operating Agreements upon Relating to State-Owned Lands and Water Bottoms

§201. Operating Agreements

A. Operating agreements under Title 30, Chapter 3, Sections 208 through 209.1 of the Louisiana Revised

Statutes of 1950 may be obtained from the State Mineral Board through the Office of Mineral Resources.

B. An operating agreement, as that term is used herein, shall refer to the contractual agreement by and between the state of Louisiana and an operator, under limited conditions and circumstances, and in lieu of a state mineral lease, to reestablish or attempt to establish production of liquid or gaseous hydrocarbons from an existing well, or wells, located on state owned lands or water bottoms previously leased, but on which the lease has terminated, by reworking, deepening, sidetracking, or plugging back of said well(s) when it has been determined by the State Mineral Board that, due to equity, economics, and other factors, it is in the best interest of the state to assume a portion of the risk of establishing production in said existing wells by contracting with the operator to attempt said establishing of production on behalf of the state whereby the state shall be entitled to receive a graduated share of production, or its value, based on recoupment of the risked cost as monitored by the Office of Mineral Resources in administering the operating agreement.

C. Operating agreements shall only be granted by the State Mineral Board in those limited situations set forth and illustrated by R.S. 30:209 (4)(a)(i-iv) when it has been determined that the best interest of the state of Louisiana will not be served by the granting of a regular state mineral lease.

D. Pursuant to R.S. 30:124 all permits will be issued subject to strict compliance by the permittee with all applicable rules governing the conduct of seismic exploration in water areas as such rules may from time to time be promulgated by the Department of Wildlife and Fisheries for the protection of oysters, fish, and wildlife. Further all wildlife and waterfowl refuges, game and fish preserves, or oyster see ground reservations or any part thereof, shall not be deemed to be included in the area covered by any permit unless written permission from the agency in charge of such refuge, preserve, or reservation is also secured.

AUTHORITY NOTE: Promulgated in accordance with Act 13, First Extraordinary Session, 1988, R.S. 30:136(A)(2) and 30:142(A), as amended by Acts 1017 and 1018 of 1990, R.S. 30:209 and 209.1, as amended by Acts 530 and 531 of 1997, and R.S. 30:211 through 216.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 26:1062 (May 2000).

Chapter 3. Fees and Other Charges

§301. Fees and Other Charges

A. The Department of Natural Resources, pursuant to the authority of Act 13 of the 1988 First Extraordinary Session of the Louisiana Legislature authorizing fees and other charges as self-generated funds, has adopted the following fees and charges commensurate with costs incurred in the application for and administration of state oil, gas or mineral leases, geophysical and geological permits and agreements, and operating agreements on state-owned lands and water bottoms. Fees are as follows:

1. fee for new mineral leases equal to 10 percent of cash payment to be submitted no later than 10 days after acceptance of bid and awarding of lease;

2. fee of $100 for processing docketed items, such as assignments, not including advertised docketed items;

3. fee of $500 for processing advertised docketed items, such as unitization agreements;

4. $200 per mile for 2-D lines, $2 per acre times the total number of state owned acres included in the seismic project for other than 2-D seismic, or $1000, whichever is greater, for the issuance of a seismic permit;

5. fee of the price per acre bid times the total number of state owned acres included in the seismic project for the granting and cost of administering an exclusive geophysical agreement;

6. fee covering the cost of administering operating agreements authorized by statute on a cost risk basis which would equal to 25 percent of the value (as determined by the sale of said production) of that portion of production returned to the state under the said operating agreements;

7. a fee of $35 per hour for the number of staff hours required to process and verify requests from payers of royalties seeking reimbursements of overpayments of royalties;

8. fee of $1 per page for all items faxed by the Office of Mineral Resources upon request by the public to cover actual cost of faxing the material;

9. fee of 25 cents per page copied or printed by the Office of Mineral Resources upon request by the public to cover the actual cost of copying the material;

10. fee of $120 per subscription for a person or entity, upon request, to receive, in advance of the sale, the monthly mineral notice book of tracts coming up each month for lease sale for a period of one year which covers the cost of compiling, binding and postage incurred by the Office of Mineral Resources;

11. fee of $1 per page for certification that document copies requested by and furnished to the public are true and correct copies of the original documents located at the Office of Mineral Resources;

12. fee for the administration of an in-kind royalty program, authorized by statute, although not collected last year due to the absence of an in-kind royalty program, which could amount to more than $1,000,000 if the program were implemented;

13. a base non-refundable fee of $200 per nomination to cover the cost of advertising; which fee shall be increased by the actual cost of advertisement per nomination, if any, and said increase levied and collected from the nominating party prior to the lease sale at which the tract appears for bid;

14. fee for copies of G5 maps which amount to $10 for copies pertaining to area north of the thirty-first parallel (Township 1 North and above) and $20 for copies pertaining to area south of the thirty-first parallel (Township 1 South and below);

15. fee of $20 charged for furnishing upon request a proof of publication for tracts advertised for lease sale;

16. fee of $5 each for furnishing upon request proofs of execution of leases, no conflict or overlap of tracts and that tract is within the 3-mile line.

B. Other Charges

1. Penalty charge of $100 per day up to a maximum of $1000 as statutorily imposed for assignments filed with the Office of Mineral Resources beyond a statutorily established time from the execution of the assignment to cover the cost of tracking, notifying assignor of and collecting said penalty.

2. For incorrectly filling out any form required by the Department of Natural Resources or the Office of Mineral Resources which accompanies the payment of any sum of money due the state, other than lease bonus, rental, or shut-in payments, unless the incorrectly filled out portion is corrected before the due date of the payment, a statutory penalty charge of 5 percent of the sum due, up to a maximum of $500 to cover the cost of having the corrections made after the fact.

3. For late payment of any sums due, other than bonus, rental, or shut-in payments, a statutory penalty charge of 10 percent of the sum due up to a maximum of $1000 to cover the cost of collecting the correct amount

4. Penalty charge of $100 per day for every day beyond 90 days from lease termination until a release of the terminated lease is recorded in all parishes in which the original lease was recorded.

5. Any liquidated damages specified as such in any contract by and between the state of Louisiana, through the staff of the State Mineral Board, the Office of Mineral Resources, including, but not limited to, leases, operating agreements, and unit agreements, and any person or business entity, the purpose of which is to facilitate the exploration and drilling for, and the establishment of production of any mineral from state owned land and water bottoms which shall, between the contracting parties, reflect the agreed upon amount of damage, including cost of recovery, incurred by the state for violation of the agreement.

6. Charge for production of gaseous or liquid hydrocarbons from unleased state acreage in the nature of damages for trespass, amounting to payment to the state of all revenue from sale of production allocated to the state acreage less the state's actual, reasonable allocated share of costs for drilling and production, as reimbursement for the cost of finding, tracking, compiling and collecting said damages.

7. Kinds and anticipated amounts of costs are:

Personal services	$ 3,413,308
Operating expenses	$ 613,155
Professional services	$ 1,020,000
Other charges	$ 7,672,888
Equipment	$ 4,889
Total	$12,724,240

8. This schedule of fees and charges, as amended, shall be re-promulgated, and the provisions hereof shall be in full force and effect, as of January 1, 2000 and shall continue in force until canceled by the Office of Mineral Resources, any other order by a duly authorized person or entity, or by order of a court of law of proper venue and authority.

AUTHORITY NOTE: Promulgated in accordance with Act 13, First Extraordinary Session, 1988, R.S. 30:136(A)(2) and 30:142(A), as amended by Acts 1017 and 1018 of 1990, R.S. 30:209 and 209.1, as amended by Acts 530 and 531 of 1997, and R.S. 30:211 through 216.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 26:1063 (May 2000).

Title 43
NATURAL RESOURCES
Part VI. Water Resources Management
Subpart 1. Ground Water Management

Chapter 1. General Provisions

§101. Applicability

A. The rules and regulations of this Subpart shall be applicable to the commissioner's jurisdiction regarding:

1. critical ground water areas;
2. ground water emergencies; and
3. management of the state's ground water resources.

B. The rules shall not alter or change the right of the commissioner to call a hearing for the purpose of taking action with respect to any matter within the commissioner's jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1212 (June 2004).

§103. Definitions

A. The words defined herein shall have the following meanings when used in these Rules and Regulations for this Subpart. All other words used and not defined shall have their usual meanings unless specifically defined in Title 38 of the Louisiana Revised Statutes.

Aquifer a ground water bearing stratum of permeable rock, sand, or gravel.

Beneficial Use the technologically feasible use of ground water for domestic, municipal, industrial, agricultural, recreational, or therapeutic purposes or any other advantageous purpose.

Commission Ground Water Resources Commission authorized by R.S. 38:3097.4.

Commissioner Commissioner of Conservation.

Critical Ground Water Area an area in which, under current usage and normal environmental conditions, sustainability of an aquifer is not being maintained due to either movement of a salt water front or water level decline, or subsidence, resulting in unacceptable environmental, economic, social, or health impacts, or causing a serious adverse impact to an aquifer, considering the areal and temporal extent of all such impacts.

Domestic Well a well used exclusively to supply the household needs of the owner lessee or his family. Uses may include drinking, cooking, washing, sanitary purposes, lawn and garden watering and caring for pets. *Domestic wells* shall also include wells used on private farms and ranches for the feeding and caring of pets and watering of lawns, excluding livestock, crops, and ponds.

Ground Water water suitable for any beneficial purpose percolating below the earth's surface which contains less than 10,000 mg/l total dissolved solids, including water suitable for domestic use or supply for a domestic water system.

Ground Water Emergency an unanticipated occurrence as a result of a natural force or a man-made act which causes a ground water source to become immediately unavailable for beneficial use for the foreseeable future or drought conditions determined by the commissioner to warrant the temporary use of drought relief wells to assure the sustained production of agricultural products in the state.

Large Volume Well a well with an 8 inch or greater diameter screen size or as further defined within these regulations.

Person any natural person, corporation, association, partnership, receiver, tutor, curator, executor, administrator, fiduciary, or representative of any kind, or any governmental entity.

Replacement Well a well located within 1,000 feet of the original well and within the same property boundary as the original well, installed within the same aquifer over an equivalent interval with an equivalent pumping rate, and used for the same purpose as the original well.

Spacing the distance a water well may be located in relation to an existing or proposed water well, regardless of property boundaries.

Sustainability the development and use of ground water in a manner that can be maintained for the present and future time without causing unacceptable environmental, economic, social, or health consequences.

User any person who is making any beneficial use of ground water from a well or wells owned or operated by such person.

Well or Water Well any well drilled or constructed for the principal purpose of producing ground water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1212 (June 2004).

Chapter 3. Critical Ground Water Area Application Procedure

§301. Who May Apply—Applicant

A. Any owner of a well that is significantly and adversely affected as a result of the movement of salt water front, water level decline, or subsidence in or from the aquifer drawn on by such well shall have the right to file an application to request the commissioner to declare that an area underlain by such aquifer(s) is a critical ground water area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1212 (June 2004).

§303. Notice of Intent to File an Application

A. The applicant shall have published a Notice of Intent to file an application for a critical ground water area designation the official parish journal of each parish affected by the proposed application. Such notice shall include:

1. name, address, and telephone number of the applicant;

2. a brief description of the subject matter of the proposed application;

3. a brief description of location including parish(es), section(s), township(s), range(s), and a map, which shall be sufficiently clear to readily identify the location of the proposed area;

4. a statement that, if the area is designated a critical ground water area, ground water use may be restricted;

5. a statement indicating where in the application can be viewed; and

6. a statement that all comments should be sent to:

Commissioner of Conservation
Post Office Box 94275
Baton Rouge, LA 70804-9275
ATTN: Director, Ground Water Resources Division

B. A Notice of Intent to file an application for the removal or modification of a critical ground water area designation shall be published in the official parish journal of each parish affected by the proposed application. Such notice shall include:

1. name, address, and telephone number of the applicant;

2. a brief description of the subject matter of the proposed application;

3. a brief description of location including parish(es) section(s), township(s), range(s), and a map, which shall be sufficiently clear to readily identify the location of the proposed area;

4. a statement that, if the critical ground water area designation is removed or modified, current restrictions, if any, shall be rescinded or modified;

5. a statement indicating where in the application can be viewed; and

6. a statement that all comments should be sent to:

Commissioner of Conservation
Post Office Box 94275
Baton Rouge, LA 70804-9275
ATTN: Director, Ground Water Resources Division

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1213 (June 2004).

§305. Application Content

A. An application for a critical ground water area designation or for the removal or a modification of a critical ground water area designation shall be filed with the commissioner of conservation at the above address no sooner than 30 days and no later than 60 days after publication of the Notice of Intent. Five copies of the application shall be filed, and must include:

1. the name, address, telephone number, and signature of the applicant;

2. a statement identifying the applicant's interest which is or may be affected by the subject matter of the application;

3. identification of the source of ground water (aquifer) to which the application applies;

4. identification of the proposed critical ground water area or area proposed to be modified or removed from a critical ground water area designation, including but not limited to:

a. its location [section(s), township(s), range(s) and parish(es)];

b. a map clearly identifying the boundaries of the subject area of the application, such as but not limited to:

i. U.S. Geological Survey topographic map(s) of appropriate scale (1:24,000, 1:62,500, 1:100,000); or

ii. LA-DOTD Louisiana parish map(s) outlining the perimeter of the area; or

iii. a digital map submitted in vector and/or raster formats, including the supporting metadata;

5. statement of facts and evidence supporting one of the following claims:

a. that no action would likely negatively impact ground water resources in the aquifer, if the application is pursuant to §307.A;

b. that alleviation of stress to the aquifer has occurred; if the application is pursuant to §307.B;

6. the proof of publication of Notice of Intent to apply to the commissioner.

B. Direct action by the commissioner for Critical Ground Water Area Hearing

1. The commissioner may initiate a hearing to consider action with respect to a specific ground water area.

2. The commissioner shall notify the public pursuant to §303 and §501.A prior to issuing an order.

3. The information presented by the commissioner at the hearing shall include but not be limited to information pursuant to §305.A and §307.

C. Application for Groundwater Emergency Hearing

1. Notwithstanding the provisions of Subsections A and B hereof, the commissioner may initiate action in response to an application of an interested party or upon the commissioner's own motion in response to a ground water emergency.

2. Subsequent to adoption of a proposed emergency order that shall include designation of a critical ground water area and/or adoption of a emergency management plan for an affected aquifer, the commissioner shall promptly schedule a public hearing pursuant to §501.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1213 (June 2004).

§307. Criteria for a Critical Ground Water Designation

A. Application for designation of a critical ground water area shall contain a statement of facts and supporting evidence substantiating that under current usage and normal environmental conditions, sustainability of an aquifer is not being maintained resulting in unacceptable environmental, economic, social, or health impacts, or causing a serious adverse impact to an aquifer, considering the areal and temporal extent of all such impacts caused by at least one of the following criteria:

1. water level decline; and/or

2. movement of a saltwater front; and/or

3. subsidence in or from the aquifer caused by overall withdrawals.

B. If the applicant is applying for modification or removal of a critical ground water area designation, the application must contain a statement of facts and supporting evidence substantiating the alleviation of the original cause of designation.

C. Applicant shall also submit recommendations regarding the critical ground water area including but not be limited to the following:

1. the proposed boundaries of the critical ground water area; and

2. a proposal to preserve and manage the ground water resources in the critical ground water area pursuant to R.S. 38:3097.6.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1213 (June 2004).

§309. Review of Critical Ground Water Area Application

A. Within 30 days of receipt of an application pursuant to §305.A, the commissioner shall notify the applicant whether the application is administratively complete.

B. If the commissioner determines an application is incomplete, the applicant shall be notified in writing of the information needed to make such application administratively complete.

C. The applicant shall have 180 days to respond to a request by the commissioner for more information.

D. The commissioner may reject and return any application determined to be:

1. without merit or frivolous; or

2. incomplete after the applicant's response to the commissioner's request for more information, unless the remaining information required by the commissioner is minor in its nature.

E. Using available data, an analysis shall be made by the commissioner to determine if the area under consideration meets the criteria to be designated a critical ground water area or can be modified or removed from a critical ground water area designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1214 (June 2004).

§311. Recordkeeping

A. The commissioner shall compile and maintain at the Office of Conservation a record of all public documents relating to any application, hearing, or decision filed with or by the commissioner.

B. The commissioner shall make records available for public inspection free of charge and provide copies at a reasonable cost during all normal business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Conservation, Office of Conservation, LR 30:1214 (June 2004).

Chapter 5. Hearings

§501. Notice of Hearings

A. Critical Ground Water Area Preliminary Hearing Pursuant to §305.A or §305.B

1. Upon determination that an application is administratively complete and if the commissioner deems it necessary, a preliminary public hearing may be scheduled at a location determined by the commissioner in the locality of the area affected by the application.

2 Notice of the preliminary hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection.

3. Such notice shall be published in the official state journal and in the official parish journal of each parish affected by the application at least 30 calendar days before the date of such hearing.

4. The commissioner shall send a copy of the notice or similar notification to the applicant, any person requesting notice, and local, state and federal agencies that the commissioner determines may have an interest in the decision relating to the application.

B. Critical Ground Water Area Hearing Pursuant to §305.C and §505.B

1. Should the commissioner determine that a preliminary hearing is not necessary, a draft order shall be issued, pursuant to R.S. 38:3097.6.A and a hearing shall be scheduled, pursuant to this Subsection.

2. The commissioner shall notify the public of any hearing initiated by the commissioner as a result of an action, a minimum of 15 days prior to the hearing.

3. Hearings initiated by the commissioner shall be held in the locality of those affected by the draft order.

4. Notice of the hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection.

5. Such notice shall be published in the official state journal and in the official parish journal of each parish affected by the commissioner's petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1214 (June 2004).

§503. Rules of Conduct

A. Hearings scheduled pursuant to this subpart shall be fact-finding in nature and cross-examination of the witnesses shall be limited to the commissioner and staff.

1. The commissioner, or a designee, shall serve as presiding officer, and shall have the discretion to establish reasonable limits upon the time allowed for statements.

2. The applicant may first present all relative information supporting their proposal followed by testimony and/or evidence from local, state and federal agencies and others.

3. All interested parties shall be permitted to appear and present testimony, either in person or by their representatives.

4. All hearings shall be recorded verbatim.

5. Copies of the transcript shall be available for public inspection at the Office of Conservation.

6. The testimony and all evidence received shall be made part of the administrative record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1214 (June 2004).

§505. Decision of the Commissioner

A. Following hearings held pursuant to §305.C or §501.A, the commissioner shall issue a written decision in the form of a draft order based on scientifically sound data gathered from the application, the participants in the public hearing, and any other relevant information. The draft order shall contain a statement of findings, and shall include but shall not be limited to:

1. the designation of the critical ground water area boundaries; and

2. the recommended plan to preserve and manage the ground water resources of the critical ground water area pursuant to R.S. 38:3097.6.B.

B. The commissioner shall make the draft order and proposed plan to preserve and manage ground water resources of the proposed critical ground water area available to the applicant, participants in the original application hearing and any other persons requesting a copy thereof. The commissioner in accordance with §501.B shall initiate hearings on the draft order and proposed management controls in the locality of those affected by the commissioner's draft order.

C. Final Orders. The commissioner shall adopt the final orders and plan to preserve and mange ground water resources after completion of §501.B. The final orders shall be made a part of the permanent records of the commissioner in accordance with §311 and shall be made available to the public upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1215 (June 2004).

§507. Right of Appeal

A. Critical Ground Water Area Designation orders of the commissioner may be appealed only to the Nineteenth Judicial District Court as provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1215 (June 2004).

Chapter 7. Water Well Notification Requirements in Non-Critical Ground Water Areas

§701. Applicability

A. All new water wells, pursuant to Subsections B and C of this Section, are required to be installed by a licensed water-well drilling contractor, pursuant to LAC 46:LXXXIX, and registered through the Department of Transportation and Development (DOTD) pursuant to LAC 56:I et seq. within 30 days after completion.

B. All new water wells except those types specifically listed in §701.C require a water well notification form be submitted to the commissioner by the owner of the well at least 60 days prior to installation..

C. All new water wells of the following types require a water well notification form be submitted to the commissioner by the owner of the well no later than 60 days after installation:

1. domestic well;

2. replacement well;

3. drilling rig supply well;

4. drought relief well:

a. use of the drought relief well type must be approved by the commissioner, pursuant to R.S. 38:3097.3(C)(9), prior to installation; and

5. all other wells the commissioner exempts for just cause:

a. there shall be no just cause exemptions granted for large volume wells;

b. the commissioner shall base exemptions on, but not be limited to:

i. proximity to other wells;

ii. beneficial use; or

iii. latest scientific data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1215 (June 2004).

§703. Notification Requirements

A. Pursuant to R.S. 38:3097.3.C(4)(a), the commissioner is authorized to collect the following information on the water well notification form:

1. date drilled or estimated date to be drilled;

2. name of driller;

3. current ownership;

4. projected location of the well in longitude and latitude;

5. depth;

6. casing size; and

7. other reasonable information required by the commissioner.

B. Pursuant to §703.A.7, the following reasonable information is required by the commissioner on the water well notification form:

1. purpose of form, including but not limited to:

a. prior notification, pursuant to §701.B;

b. post notification, pursuant to §701.C;

c. well exempted for just cause, pursuant to R.S. 38:3097.3.C(4)(a)(v);

d. drought well authorization, pursuant to R.S. 38:3097.3.C(9);

e. information change; or

f. cancellation of notification because well not drilled;

2. well information, including but not limited to:

a. owner's well number;

b. well use;

c. aquifer screened; and

d. estimated pumping rate;

3. well location, including but not limited to:

a. parish; and

b. longitude and latitude; or

c. if longitude and latitude is unavailable:

i. a map with the well location marked; or

ii. a hand drawn map that includes enough detail so that someone unfamiliar with the area can find the well;

4. drilling contractor, including but not limited to:

a. driller's contact information;

b. driller's license number; and

c. third party or consultant's contact information;

5. owner's signature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1215 (June 2004).

§705. Notification Review Process

A. The commissioner shall review the submitted information, pursuant to §701.B, within 30 days.

1. The commissioner may:

a. issue an order placing restrictions on the well; or

b. request further reasonable information; or

c. take no action.

2. Should the commissioner request additional reasonable information for new wells, pursuant to §705.A.1, the commissioner shall have an additional 30 days from the date the information is received to review the water well notification form.

B. For a large volume well, the commissioner may, within 30 days after receiving prior notification, pursuant to §701.B, issue to the owner an order fixing:

1. allowable production;

2. spacing; and

3. metering.

C. For all other wells in a non-critical ground water area, the commissioner may issue an order to the owner within 30 days of receiving prior notification, pursuant to §701.B, which may only fix spacing of the well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1216 (June 2004).

§707. Right of Appeal

A. Within 30 days of the date of the correspondence regarding Paragraphs 1 and 2 of this Subsection, the applicant may appeal to the Ground Water Resources Commission to determine one of the following:

1. the reasonableness of the commissioner's request, pursuant to Section §705.A; or

2. the justification for the commissioner's well restriction order, pursuant to Section §705.B and C.

B. The appeal shall be addressed to:

Ground Water Resources Commission
Post Office Box 94275
Baton Rouge, LA 70804-9275
ATTN: Chairperson, Ground Water Resources Commission

C. The commission may make a determination within 45 days from the date of the appeal, pursuant to R.S. 38:3097.3.C(4)(b)(iii), regarding the reasonableness of the commissioner's request, pursuant to Subsection A.1 of this Section.

D. The commission may review the appeal of an applicant, pursuant to Subsection A.2 of this Section, and may make a determination regarding the commissioner's well restriction order.

1. The commission may reject the commissioner's order and require the commissioner to reconsider such order.

2. An order that has been returned to the commissioner twice shall be considered a final decision.

E. A final decision of the commissioner may be appealed only to the Nineteenth Judicial District Court as provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1216 (June 2004).

Title 43
NATURAL RESOURCES
Part I. Office of the Secretary
Part III. Office of Management and Finance
Part V. Office of Mineral Resources
Part VI. Water Resources Management
Index